

## **Exhibit C**

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION  
4

5 WALTER W. THIEMANN, et al.,:

6 Plaintiffs, :

7 -v- : CASE NO. C-1-00-793

8 OHSL FINANCIAL CORPORATION, : (Judge S. Beckwith)  
9 et al., :

10 Defendants. :  
11 - - -  
12

13 Deposition of ROBERT HOVERSON, a witness  
14 herein, taken by the Plaintiffs as upon cross-  
15 examination pursuant to the Federal Rules of Civil  
16 Procedure, and pursuant to notice and stipulations  
17 hereinafter set forth, at the offices of Gene Mesh  
18 & Associates, 2605 Burnet Avenue, Cincinnati, Ohio,  
19 at 10:30 a.m., on Thursday, May 27th, 2004, before  
20 Kelly Green, RPR, a Notary Public within and for  
21 the State of Ohio.  
22

23 Williams and Oliver  
24 6689 Raes Creek Court  
Loveland, Ohio 45140  
(513) 683-9626

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## APPEARANCES

1  
2  
3 On behalf of the Plaintiffs:  
4 MICHAEL G. BRAUTIGAM, ESQ.  
5 GENE MESH, ESQ.  
6 Gene Mesh & Associates  
7 2605 Burnet Avenue  
8 Cincinnati, Ohio 45219  
9 On behalf of the Defendants:  
10 JAMES E. BURKE, ESQ. (Of Counsel)  
11 Keating, Muething & Klekamp  
12 1400 Provident Tower  
13 One East Fourth Street  
14 Cincinnati, Ohio 45202  
15 On behalf of the Defendant,  
16 OHSL and Provident:  
17 CHARLES F. SHANE, ESQ.  
18 Bieser, Greer & Landis  
19 400 National City Center  
20 6 North Main Street  
21 Dayton, Ohio 45402  
22  
23 On behalf of the Defendant,  
24 Ernst & Young:  
MARY HELEN PERRY, ESQ. (Telephonic)  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
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## STIPULATIONS

1  
2 It is stipulated by and among counsel  
3 for the respective parties that the deposition of  
4 ROBERT HOVERSON, a witness herein, may be taken at  
5 this time by the Plaintiffs as upon cross-  
6 examination, pursuant to Federal Rules of Civil  
7 Procedure and pursuant to notice; that the  
8 deposition may be taken in stenotypy by the notary  
9 public and court reporter and transcribed by her  
10 out of the presence of the witness; that the  
11 deposition is to be submitted to the witness for  
12 his examination and signature, and that signature  
13 is not waived.  
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1 ROBERT HOVERSON,  
2 a witness herein, having been duly sworn, was  
3 examined and testified as follows:  
4 CROSS-EXAMINATION  
5 BY MR. BRAUTIGAM:  
6 Q. Good morning, Mr. Hoverson. My name is  
7 Michael G. Brautigam, and represent Walter  
8 Thiemann, Gary and Lisa Meier, and a putative class  
9 of OHSL shareholders.  
10 Can I direct your attention to  
11 Defendants' Exhibit 1 in front of you?  
12 A. Um-hum.  
13 Q. What is Defendants' Exhibit 1?  
14 A. Well, it appears to be an invitation to  
15 a special meeting of OHSL shareholders, it says.  
16 Q. Mr. Hoverson, in 1999, did you read  
17 every word and look at every number of that  
18 document?  
19 A. I can't -- can't tell you if I did or  
20 not. Been too long ago.  
21 Q. Is it fair to describe Defendants'  
22 Exhibit 1 as the proxy materials registration  
23 statement?  
24 A. Appears to be. I certainly would have

2 (Pages 2 to 5)

Page 6

1 been familiar with the documents as it relates to  
2 the data that we submitted. I would have looked at  
3 all that.

4 Q. Do you believe that the OHSL  
5 shareholders had a right to rely on every word and  
6 every number in the document?

7 MR. BURKE: Objection. Calls for  
8 speculation.

9 A. The document is what it is. I mean, I--  
10 you know. You have to tell me what they rely on --  
11 what they could rely on and what they couldn't rely  
12 on.

13 Q. No, that's not the way it works. My  
14 question for you is --

15 A. I don't know what they're allowed to  
16 rely on. Okay? All I know is what the data that  
17 we submitted -- and that's all I can speak to.

18 Q. Mr. Hoverson, I'll try not to step on  
19 your answers if you try not to step on my  
20 questions, and it really would be best for the  
21 record if we don't speak at the same time. Okay?

22 MR. BURKE: Go ahead.

23 Q. Mr. Hoverson, do you believe that the  
24 OHSL shareholders had a right to rely on every word

Page 8

1 speculation.

2 THE WITNESS: How do you want me to -- I  
3 don't know how to answer the question.

4 MR. BURKE: Then that's fine. You don't  
5 have to if you don't understand the question.

6 BY MR. BRAUTIGAM:

7 Q. Is there something that you don't  
8 understand about the question?

9 A. Yeah. I don't know how to answer the  
10 question.

11 Q. Mr. Hoverson, did Provident provide  
12 financial data that went into Defendants' Exhibit  
13 1?

14 A. We did.

15 Q. Did you ever learn after the fact that  
16 the data that Provident provided was not accurate?

17 A. Would you like to get specific and ask  
18 me a specific question about the data? I'll be  
19 happy to answer it.

20 Q. Mr. Hoverson, can you answer my  
21 question, please?

22 MR. BURKE: Objection. I think he just  
23 indicated he can't, but you may --

24 A. Well, and I'm happy to answer it if, you

Page 7

1 and every number in Defendants' Exhibit 1?

2 MR. BURKE: Objection. Asked and  
3 answered. You may answer again.

4 A. I mean, you know, shareholders have a  
5 right to rely on the documents that we give them.

6 Q. Do you believe that Defendants' Exhibit  
7 1 tells the truth, the whole truth, and nothing but  
8 the truth about the OHSL-Provident merger?

9 MR. BURKE: Objection. Form. You may  
10 answer.

11 A. Yeah, I don't quite sure know how to  
12 answer the question, frankly. Again, I can speak  
13 to the data that we submitted and am comfortable  
14 that it was accurate and they could rely on it.

15 Q. You're comfortable that the data that  
16 Provident submitted to be included in Defendants'  
17 Exhibit 1 is accurate?

18 A. Sure.

19 Q. And you're comfortable as of today that  
20 it was accurate?

21 A. Sure. Accurate as of the time, sure.

22 Q. Did you later learn that the data  
23 submitted by Provident was not accurate?

24 MR. BURKE: Objection. Calls for

Page 9

1 know -- if you would like me to speculate on  
2 things, I'm not going to do that. If you want to  
3 talk about the restatement in March 5th of 2003, is  
4 that specifically what you're referring to?

5 Q. Mr. Hoverson --

6 A. I'm happy to respond to that question if  
7 you have a question that relates to that.

8 Q. Mr. Hoverson, can you answer my  
9 questions, please?

10 A. I did.

11 Q. Do you believe that the financial data  
12 that Provident provided in Defendants' Exhibit 1 is  
13 accurate?

14 A. You know, again, you've got to have  
15 context around these questions. When that data was  
16 submitted, it was accurate. If you would like to  
17 ask a question about the restatement that occurred  
18 March 5th, I'm happy to answer that.

19 Q. What do you mean when you say when that  
20 data was submitted, it was accurate?

21 A. Just that.

22 Q. Please turn to page 6 in the proxy  
23 materials.

24 A. In the proxy? Is that numbered 1

3 (Pages 6 to 9)

Page 10

1 through 6, front through back?  
 2 Q. It has a 6 at the bottom.  
 3 A. Okay.  
 4 Q. Provident provided numbers for the year-  
 5 end 1994 on that page, correct?  
 6 A. Yeah.  
 7 Q. And we now know that those numbers are  
 8 materially misstated, correct?  
 9 MR. BURKE: Objection. Misstates the  
 10 facts; assumes facts not in evidence; calls  
 11 for speculation. You may answer.  
 12 A. Yeah, I don't know that that's true at  
 13 all.  
 14 Q. Are those numbers correct?  
 15 A. As far as I know, they're correct.  
 16 1994?  
 17 Q. Yeah.  
 18 A. As far as I know, they're correct.  
 19 Q. Okay. Provident provided financial  
 20 numbers for the year-end 1995, correct?  
 21 A. Yes.  
 22 Q. Are those numbers correct?  
 23 A. As far as I know, they are correct.  
 24 Q. Provident provided financial information

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1 for year-end 1996; is that right?  
 2 A. Yes.  
 3 Q. Are those numbers that appear on page 6  
 4 of this document materially misstated?  
 5 MR. BURKE: Objection. Calls for  
 6 speculation.  
 7 A. Yeah, I don't know what that means,  
 8 frankly.  
 9 Q. You don't know what that means?  
 10 A. Materially misstated. I don't know what  
 11 that means, number one. Number two... I'm just  
 12 trying -- as to when the restatement -- I guess it  
 13 went back to -- did it go back to '96? I guess it  
 14 went back to '96.  
 15 Look, I will stipulate that we restated  
 16 our numbers in March of 2003 -- okay? -- and all  
 17 the way back I believe either to '96 or '97. That  
 18 was done.  
 19 Q. Actually, the restatement goes back to  
 20 '94, doesn't it?  
 21 A. I don't think so.  
 22 Q. Okay.  
 23 A. That's not my memory of it.  
 24 Q. Okay. Well, I'll show you some

Page 12

1 documents later. What does it mean to have a  
 2 restatement?  
 3 MR. BURKE: Objection. Calls for  
 4 speculation.  
 5 A. Yeah, what's it mean to have a  
 6 restatement? It means what it says. We restated  
 7 the numbers.  
 8 Q. Why did you do that?  
 9 A. Because there was an accounting error  
 10 that was discovered in February of 2003.  
 11 Q. You're familiar with the word  
 12 "material," correct?  
 13 MR. BURKE: Objection.  
 14 A. I am.  
 15 MR. BURKE: Calls for a legal  
 16 conclusion. You may answer.  
 17 Q. What does the word "material" mean?  
 18 A. It means different things in different  
 19 contexts.  
 20 Q. What does it mean in the context of an  
 21 accounting error?  
 22 MR. BURKE: Objection. Calls for  
 23 speculation.  
 24 A. I'm not going to speculate.

Page 13

1 Q. What does it mean in the context of a  
 2 restatement?  
 3 A. Again, I'm not going to speculate. The  
 4 numbers are what they are.  
 5 Q. You testified a moment ago, if I  
 6 understood your testimony correctly, that you did  
 7 not know what it means to be materially misstated;  
 8 is that correct?  
 9 MR. BURKE: Your testimony is what it  
 10 is.  
 11 A. You tell me what I said.  
 12 Q. Do you know what it means --  
 13 A. I'm not...  
 14 Q. -- to have the financial statements  
 15 materially misstated?  
 16 A. I believe I said I did not. I'm not  
 17 trying to get into speculating what material means,  
 18 and I'm not gonna.  
 19 Q. Mr. Hoverson, are you able to read and  
 20 interpret documents that come forth from Provident?  
 21 MR. BURKE: Objection to form. What do  
 22 you mean documents that come forth from  
 23 Provident?  
 24 Q. You can answer the question.

4 (Pages 10 to 13)

Page 14

1 A. Yeah, I don't know what -- I mean, are  
 2 you asking me if I can read? I can read.  
 3 Q. Are you able to read and interpret  
 4 Provident 2002 annual report?  
 5 A. Yes, I can.  
 6 Q. Did you read every word and look at  
 7 every number in Provident's 2002 annual report?  
 8 A. I did.  
 9 Q. Did you understand what you read?  
 10 A. Um-hum.  
 11 Q. Is that a yes?  
 12 A. That's a yes.  
 13 Q. It would be better for the record if you  
 14 could answer questions yes or no and not um-hum.  
 15 Would you please pick up Plaintiffs'  
 16 Exhibit 90, which is at that pile by your right  
 17 elbow.  
 18 MR. BURKE: It's in the middle of the  
 19 pile.  
 20 Q. Would you please turn to page 46 of the  
 21 document.  
 22 A. Um-hum.  
 23 Q. What do you find on page 46 of the  
 24 document?

Page 15

1 A. E&Y opinion.  
 2 Q. Can you describe that in greater detail  
 3 for the record?  
 4 A. It's a standard clean, you know, opinion  
 5 on your financial statements.  
 6 Q. Does the word "material" appear in that  
 7 -- on that page?  
 8 A. I would have to read it. (Examining  
 9 document.) Yes, it does.  
 10 Q. Does the phrase "free of material  
 11 misstatement" appear?  
 12 A. Would you like to point out where it is?  
 13 Q. Second paragraph, second line.  
 14 A. Okay. Um-hum.  
 15 Q. What does it mean to be free of material  
 16 misstatement in this context?  
 17 MR. BURKE: Objection. Calls for  
 18 speculation. He's not an accountant. You may  
 19 answer.  
 20 A. Right. They're the ones that make the  
 21 judgments as to materiality. You would have to ask  
 22 them, frankly. It's not my statement. You know,  
 23 what it means, you know, is that they believe that  
 24 the statements are, you know, accurate --

Page 16

1 reasonably accurate, you know.  
 2 Q. Did you believe --  
 3 A. Can be relied on.  
 4 Q. Can you relied on by whom?  
 5 A. Whoever reads them.  
 6 Q. Did you believe that Provident's  
 7 financial statements were free of material  
 8 misstatements in 2002?  
 9 A. I believe Provident's financial  
 10 statements were accurate in 2002.  
 11 Q. Do you believe that they were free of  
 12 material misstatement in 2002?  
 13 A. I believe they were accurate in 2002.  
 14 Q. Mr. Hoverson, you're not answering my  
 15 question.  
 16 MR. BURKE: Yes, he is, Michael. He  
 17 doesn't have to accept your words. He's  
 18 responding to your question. So please don't  
 19 say he's not answering, because he doesn't  
 20 have to answer as you prefer. That's a  
 21 responsive answer, and let's move on.  
 22 Q. Mr. Hoverson, please tell me what your  
 23 understanding of free material misstatement means  
 24 in --

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1 MR. BURKE: Objection.  
 2 Q. -- in the context of Provident's  
 3 financial statements.  
 4 MR. BURKE: Objection. Asked and  
 5 answered. He's told you he doesn't know. You  
 6 may answer.  
 7 A. I can't -- I can't say any more about  
 8 it. Okay? I'm not going to get into speculating  
 9 about what's material and what's not. I'm not. I  
 10 don't know. Okay?  
 11 Q. Mr. Hoverson, you are the chief  
 12 executive officer of Provident Bank --  
 13 A. Um-hum.  
 14 Q. -- correct?  
 15 A. I'm not going to speculate on  
 16 materiality. I'm not going to speculate  
 17 materiality, period.  
 18 Q. Mr. Hoverson, can you answer my  
 19 question?  
 20 MR. BURKE: We will stipulate he's the  
 21 CEO of Provident. Let's go on.  
 22 Q. Mr. Hoverson, are you the chief  
 23 executive officer of Provident?  
 24 MR. BURKE: We will stipulate. Next

5 (Pages 14 to 17)

Page 18

1 question.  
 2 Q. Can you answer my question?  
 3 MR. BURKE: Mr. Brautigam, no. We've  
 4 stipulated to that fact. Move on, please.  
 5 MR. BRAUTIGAM: Are you instructing him  
 6 not to answer?  
 7 MR. BURKE: I am stipulating to that  
 8 fact, so let's move on to the next  
 9 question. That is not -- there's no need for  
 10 that. You know that's a fact.  
 11 BY MR. BRAUTIGAM:  
 12 Q. Mr. Hoverson, do you also function as  
 13 Provident's chairman of the board?  
 14 A. Yes.  
 15 Q. Why don't you have the official title?  
 16 A. We just don't have an actual chairman.  
 17 Q. As Provident's acting chairman of the  
 18 board and as Provident's chief executive officer,  
 19 are part of your duties and responsibilities to  
 20 produce financial statements that are free of  
 21 material misstatement?  
 22 MR. BURKE: Objection. Asked and  
 23 answered. You may answer.  
 24 A. Part of my duty is to produce, you know,

Page 19

1 statements that are accurate, which we do. And  
 2 when deemed that they're not, we notify and change  
 3 them. I don't know how else to answer the  
 4 question.  
 5 Q. And is that because you don't know what  
 6 the phrase "free of material misstatement" means?  
 7 A. It means, like I said before, that I'm  
 8 not going to speculate about materiality issues,  
 9 period. I'm not.  
 10 Q. Mr. Hoverson, you understand that this  
 11 process -- the way this process works, that I ask  
 12 you questions, you're to answer based on -- to the  
 13 best of your ability?  
 14 A. Do you understand that --  
 15 MR. BURKE: To the best of his ability.  
 16 A. -- I can answer the questions? You  
 17 don't answer the questions. I answer the  
 18 questions.  
 19 Q. Mr. Hoverson, are you familiar with  
 20 something known as materiality threshold?  
 21 MR. BURKE: Objection. Calls for  
 22 speculation.  
 23 A. Yeah, yeah, I'm... Obviously, this  
 24 issue -- there is such a thing as materiality.

Page 20

1 What it is, when, where, is not something that's a  
 2 matter of science.  
 3 Q. Are you familiar with something known as  
 4 material adverse effect?  
 5 MR. BURKE: Objection. Same objection.  
 6 Same answer.  
 7 A. You know, depends on the context again.  
 8 Q. Did you read the agreement and plan of  
 9 merger between OHSL and Provident at some point in  
 10 1999?  
 11 A. I expect that I did, but it's been five  
 12 years ago.  
 13 Q. Okay. Can I direct your attention to  
 14 page 82 of the proxy materials, Defendants' Exhibit  
 15 1.  
 16 A. This?  
 17 Q. Yes.  
 18 A. Okay.  
 19 Q. Can I direct your attention to the  
 20 definition of material adverse effect and ask you  
 21 to read that to yourself, please.  
 22 A. (Examining document.) Okay.  
 23 Q. What is the dollar amount that has been  
 24 selected for a material adverse effect with respect

Page 21

1 to the OHSL-Provident transaction?  
 2 A. Well, the number on the page that you  
 3 point out is \$25,000 on that particular item.  
 4 Q. And what does that mean to have defined  
 5 as more than \$25,000 as a material adverse effect?  
 6 MR. BURKE: Objection. Calls for a  
 7 legal conclusion. You may answer.  
 8 A. Frankly, I don't know. We'd have to go  
 9 to the part of the document where it's used.  
 10 Q. It's used on this page, right?  
 11 A. No, it's a definition on this page is  
 12 all.  
 13 Q. Well, how do you apply that definition  
 14 to the merger?  
 15 MR. BURKE: Objection.  
 16 A. I don't know. You would have to go to  
 17 the contract where it's used.  
 18 Q. Isn't this the contract, the agreement  
 19 and plan of merger?  
 20 A. Yeah. You'd have to find the page where  
 21 that term is used.  
 22 Q. Doesn't this mean that if there's a  
 23 discrepancy of more than \$25,000 with respect to  
 24 anything in the OHSL-Provident merger, that that is

6 (Pages 18 to 21)

Page 22

1 deemed material?  
 2 MR. BURKE: Objection. Calls for  
 3 speculation.  
 4 A. I don't know that that's what that  
 5 means.  
 6 Q. What do you think it means?  
 7 A. I don't know what it means. It says  
 8 material adverse effect, you know. The financial  
 9 conditions results of operations, you know,  
 10 \$25,000. You would have to go to see the context  
 11 where they talk about it.  
 12 Q. How do you know that it's talked about  
 13 somewhere in Defendants' Exhibit 1?  
 14 MR. BURKE: We don't.  
 15 A. Well, if they defined it, they would  
 16 have used it. That's the only reason they would  
 17 have defined it.  
 18 Q. Mr. Hoverson, do you believe that the  
 19 definition of material adverse effect in excess of  
 20 \$25,000 means that if there is a discrepancy with  
 21 any numbers with respect to the transaction greater  
 22 than \$25,000, that it is deemed material?  
 23 MR. BURKE: Objection. Calls for  
 24 speculation; already asked and answered.

Page 23

1 A. Yeah, again, all I can do is tell you  
 2 what it says. It says that, you know, with respect  
 3 to a person, a material adverse effect on the  
 4 condition, operation, and business of such person  
 5 is defined as \$25,000, and that we'd have to read  
 6 where it's used to find out what, you know, just  
 7 what...  
 8 Q. What do you mean, read where it's used?  
 9 A. In the contract.  
 10 Q. Mr. Hoverson, a person is also defined  
 11 as any bank in this transaction on the next page,  
 12 correct?  
 13 A. Okay. Yes.  
 14 Q. Okay. Let me direct your attention back  
 15 to 82. Do you see the word "material" appears in  
 16 quotes under material adverse effect?  
 17 A. Yeah, yes.  
 18 Q. Please define the word "material" as  
 19 it's used in quotes --  
 20 MR. BURKE: Objection.  
 21 Q. -- in that section.  
 22 MR. BURKE: Calls for speculation; asked  
 23 and answered.  
 24 A. I don't think I understand the question.

Page 24

1 What's the question again?  
 2 Q. Okay. The word "material" appears on  
 3 page 82 in quotes, correct?  
 4 A. Um-hum.  
 5 Q. Yes?  
 6 A. Um-hum.  
 7 MR. BURKE: Just the word "material"  
 8 does not appear in quotes.  
 9 THE WITNESS: Yeah, it does.  
 10 MR. BURKE: The phrase appears in  
 11 quotes.  
 12 THE WITNESS: No, it's here.  
 13 MR. BURKE: Okay. I stand corrected.  
 14 Withdraw the objection.  
 15 BY MR. BRAUTIGAM:  
 16 Q. Please define material as it's used in  
 17 quotes in that section on page 82.  
 18 MR. BURKE: Same objection.  
 19 A. \$25,000 as it's used in this context.  
 20 Q. And did Provident provide numbers to  
 21 OHSL that were inaccurate by more than \$25,000?  
 22 A. Again, we restated our numbers in March  
 23 of '03. Obviously, the restatement affecting '99  
 24 was more than \$25,000. But other than that, I...

Page 25

1 don't know how to answer that questions. The  
 2 numbers we gave OHSL, you know, were accurate, you  
 3 know, at the time based on what we knew.  
 4 Q. And later, you learned that the numbers  
 5 were not accurate, correct?  
 6 A. We restated them.  
 7 Q. Is my question correct, Mr. Hoverson?  
 8 MR. BURKE: Mr. Hoverson has already  
 9 answered your question.  
 10 A. We restated the numbers.  
 11 Q. And all of the numbers that were  
 12 restated were greater than \$25,000, correct?  
 13 MR. BURKE: Objection to form. He may  
 14 answer.  
 15 A. What's the question again?  
 16 Q. Actually, you said yes. Didn't you say  
 17 yes a second ago?  
 18 A. No. Would you like to ask the question  
 19 again? I'm willing to answer the question.  
 20 Q. Mr. Hoverson, I asked you if you later  
 21 learned that the numbers were not correct, and you  
 22 answered by saying we restated them. Does that  
 23 mean that the original numbers were not correct?  
 24 A. Again, we restated the numbers. That's

7 (Pages 22 to 25)

Page 26

1 a fact.

2 Q. And you restated the numbers because  
3 they were materially misstated prior to the  
4 restatement, correct?

5 MR. BURKE: Objection. Asked and  
6 answered.

7 A. Right. I mean, I've answered already.  
8 We restated the numbers because we determined we  
9 had -- in 2003 that there was an accounting error,  
10 and so we restated the numbers. Those are facts.  
11 They're on the record. It's on the record.

12 Q. And that means that the numbers that  
13 Provident provided to the OHSL shareholders which  
14 Provident expected the OHSL shareholders to rely on  
15 were materially misstated, correct?

16 MR. BURKE: Objection.

17 A. I'm not gonna --

18 MR. BURKE: Asked and answered.

19 A. Yeah.

20 MR. BURKE: Calls for speculation.

21 A. It's up to you to draw the conclusions  
22 you want about that. The facts are the facts. We  
23 restated the numbers; that included the numbers in  
24 '99.

Page 27

1 Q. Mr. Hoverson, are all restatements by  
2 definition material?

3 MR. BURKE: Calls for speculation. You  
4 may answer.

5 A. Yeah, I don't know how to answer that.

6 Q. Were these restatements material?

7 MR. BURKE: Which restatements?

8 MR. BRAUTIGAM: All of the Provident  
9 restatements from 2003.

10 MR. BURKE: From 1997 through 2003? Is  
11 that what you're saying?

12 MR. BRAUTIGAM: Going back to 1994.  
13 Jim, we're doing fine.

14 MR. BURKE: No, no, we're not doing  
15 fine.

16 MR. BRAUTIGAM: No more speaking  
17 objections. We're doing fine.

18 MR. BURKE: We're not doing fine. I'm  
19 trying to understand what you're saying.

20 MR. BRAUTIGAM: Jim, it's not important  
21 for you to understand.

22 MR. BURKE: Mr. Brautigam, my witness is  
23 not going to answer unless I understand your  
24 questions. Okay?

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1 And your questions are intentionally  
2 vague, intentionally opaque, because you like  
3 to create a muddy record.

4 Are you saying as of 1996, 1997, 1998,  
5 1999, any particular period, the entire  
6 period, cumulative basis, individually?

7 And until you make some clarification,  
8 this witness can't answer that question,  
9 because that question is vague and  
10 misleading.

11 Reask your question, and we'll try to  
12 figure out what you're saying.

13 MR. BRAUTIGAM: Would you please read  
14 back the question?

15 (The question was read back.)

16 MR. BURKE: I have no idea what that  
17 question is, so objection to form.

18 Meaningless.

19 BY MR. BRAUTIGAM:

20 Q. You can answer, Mr. Hoverson.

21 MR. BURKE: If you understand.

22 A. I don't know how to answer the question,  
23 if you want to try again.

24 Q. Mr. Hoverson, Provident restated its

Page 29

1 financial statements going back to 1994 in 2003,  
2 correct?

3 A. My memory of it is it didn't go back to  
4 1994, no.

5 Q. Okay. As you sit here today, what's  
6 your memory of it?

7 A. 1997 or 6, correct? '97, I believe.

8 Q. Okay. I'll show you some documents  
9 later, but as you sit here --

10 A. That's my memory.

11 Q. Okay. Do you believe that Provident's  
12 restatements going back to 1997 were material?

13 A. I've answered this question --

14 MR. BURKE: Objection.

15 A. -- 15 times. I'm not going to speculate  
16 on materiality.

17 Q. Mr. Hoverson, why would it require you  
18 to speculate as to materiality?

19 A. I'm not going to speculate on  
20 materiality.

21 Q. Why would a question like that require  
22 you to speculate? You're the CEO of the company,  
23 correct?

24 A. The numbers are the numbers. We

8 (Pages 26 to 29)

Page 30

1 restated them. I'm happy to verify what the  
2 numbers are, but I'm not going to speculate as to  
3 materiality.

4 Q. Did Provident ever restate numbers that  
5 were not material?

6 MR. BURKE: Objection. Same  
7 objection. Calls for speculation. I have no  
8 idea what you're talking about.

9 A. I answered the question already. I'm  
10 not going to speculate on materiality.

11 Q. Mr. Hoverson, it's a different question.

12 A. I'm not going to speculate on  
13 materiality. It's the same damn question.

14 Q. Mr. Hoverson, my question doesn't call  
15 for speculation.

16 MR. BURKE: It does, Mr. Brautigam.  
17 With all respect, it does. And he's told you  
18 a dozen times now he's not going to speculate.

19 Q. Mr. Hoverson, are you familiar with  
20 something known as a fairness opinion?

21 A. Yeah.

22 Q. What is a fairness opinion?

23 A. Well, I suppose there are various kinds;  
24 but typically, the one you would think of used in

Page 32

1 acquisitions, correct?

2 A. I am.

3 Q. In fact, just recently, Provident  
4 obtained a fairness opinion from UBS Securities  
5 with respect to the PFGI-National City merger,  
6 correct?

7 A. We did.

8 Q. And with respect to that fairness  
9 opinion, did National City provide audited  
10 financial information to your investment banker?

11 A. They relied on it.

12 Q. Excuse me?

13 A. They relied on it. It's in the public  
14 domain. They don't have to provide it for them.  
15 It's in the public domain.

16 Q. And do you believe that UBS had a right  
17 to rely on the audited financial statements that  
18 were provided to you by National City?

19 MR. BURKE: Objection. Calls for  
20 speculation as to what UBS did.

21 A. Yeah, I don't know where they got the  
22 financial statements from National City. They were  
23 in the public domain. They relied on them, I'm  
24 sure.

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1 context of evaluation of companies and mergers.  
2 Q. Did the OHSL-Provident merger have a  
3 fairness opinion?

4 A. I don't remember. I assume it did.

5 Q. Okay. Turn to the last four pages of  
6 Defendants' Exhibit 1, which is Annex C.

7 A. Um-hum.

8 Q. Have you seen that before, Mr. Hoverson?

9 A. I don't remember.

10 Q. What is --

11 A. It's not addressed to me, so I don't  
12 remember.

13 Q. What is Annex C to Defendants' Exhibit  
14 1?

15 MR. BURKE: Objection. Foundation. You  
16 may answer if you know.

17 A. Without really reading it, it would  
18 appear to be a fairness opinion from McDonald  
19 addressed to OHSL.

20 Q. And you're familiar with the phrase "due  
21 diligence," correct?

22 A. I am.

23 Q. And you're familiar with how fairness  
24 opinions work with respect to mergers and

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1 Q. And they had a right to rely on them,  
2 correct?

3 MR. BURKE: Objection. Calls for legal  
4 conclusion; calls for speculation.

5 Q. Mr. Hoverson, we're not done with that  
6 yet. If you would, keep the last four pages out.

7 A. Okay.

8 Q. Mr. Hoverson, turn to page 2 of the  
9 fairness opinion. Would you review the second  
10 small 2 to yourself, please.

11 A. 2 little I?

12 Q. Yes.

13 A. (Examining document.) Okay.

14 Q. This is in the public domain, as you put  
15 it, stating that McDonald, as the investment  
16 advisors to OHSL, reviewed PFGI's annual reports to  
17 shareholders, correct?

18 A. Yes.

19 Q. And that includes audited financial data  
20 going back to December 31st, 1996, correct?

21 A. That's what it says.

22 Q. Were the numbers that Provident provided  
23 with respect to the OHSL-Provident merger  
24 materially misstated as of December 31st, 1996?

Page 34

1 MR. BURKE: Objection.

2 A. I already answered the question. I'm  
3 not going to answer it again. I answered it  
4 already. I'm not going to speculate as to  
5 materiality.

6 Q. Mr. Hoverson, were the numbers provided  
7 as of December 31st, 1996, inaccurate?

8 A. We restated our numbers in March of  
9 2003. I would have to check to see if that  
10 affected any 1996 member numbers. My memory of it  
11 is it might have, but I'm not sure if it did or  
12 not. Those are the facts.

13 Q. Were the numbers that may have been  
14 changed in 1996 more than \$25,000?

15 MR. BURKE: Objection. Calls for  
16 speculation.

17 A. Don't know.

18 Q. Mr. Hoverson, did Provident provide  
19 financial information as of December 31st, 1997?

20 A. Provide it to who in relation to what?

21 Q. To OHSL and/or its investment advisor in  
22 relation to the OHSL-Provident merger?

23 A. I mean, again, it -- I'm sure it was  
24 reviewed. It's in the public domain.

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1 MR. BURKE: Objection. Asked and  
2 answered.

3 A. We restated our numbers in 2003 and that  
4 affected the 1997 numbers. That's the way I'm  
5 going to answer that question.

6 Q. And you restated the numbers because  
7 they were inaccurate, correct?

8 MR. BURKE: Objection. Asked and  
9 answered; argumentative.

10 A. I've answered.

11 Q. What was your answer?

12 A. We restated the numbers in March of  
13 2003, and it changed those numbers. Okay?

14 Q. The year-end 1998 numbers, correct?

15 A. Sure. They were restated in 2003.

16 Q. Okay.

17 A. I've said that ten times.

18 Q. What was the order of magnitude of the  
19 restatement?

20 MR. BURKE: What restatement?

21 A. Yeah.

22 MR. BURKE: '98, '99, '97, cumulatively?

23 A. As to what year? Yeah.

24 Q. How many restatements did Provident have

Page 35

1 Q. Were the numbers that Provident provided  
2 as of year-end 1997 materially misstated?

3 MR. BURKE: Same objection.

4 A. Yeah.

5 MR. BURKE: Asked and answered.

6 A. Same comment.

7 Q. Were the numbers that Provident provided  
8 for year-end 1997 inaccurate?

9 A. Same comments I made before. We  
10 restated our numbers in 2003.

11 Q. Mr. Hoverson, I'm trying to --

12 A. And it's on the record as to what that  
13 number was, and I will be happy to verify if we had  
14 the numbers around here that that's the number.  
15 Okay?

16 Q. Mr. Hoverson, that's not the way the  
17 process works. I'm trying to ask clear and precise  
18 questions and it's your job --

19 A. No. You're trying to get me to  
20 speculate as to materiality, and I'm not going to  
21 do that. If you would like to ask clear questions,  
22 I would be happy to do them.

23 Q. Mr. Hoverson, the year-end numbers from  
24 1997, were they wrong?

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1 in 2003?

2 A. Two.

3 Q. And with respect to the first one, can  
4 you describe it?

5 MR. BURKE: Can you describe it?

6 A. Yeah, can we get -- don't we have a  
7 document so we can talk about the numbers instead  
8 of speculating? I think, you know, I can give you  
9 rough numbers, but wouldn't you rather be precise?

10 Q. Just describe the restatement,

11 Mr. Hoverson.

12 MR. BURKE: Objection to form; vague.

13 A. Okay. I'll describe the restatement.

14 It was a restatement of lease accounting due to an  
15 inadvertent error made in a lease accounting model  
16 starting, I believe, in 1997 is when we determined  
17 that the error started, and we discovered it in  
18 February of 2003, and restated those prior periods.

19 Q. Describe the error.

20 MR. BURKE: Objection.

21 A. Error in a model used to recognize  
22 incumbent expenses relating to auto leases.

23 Q. Who made the error?

24 A. The model has got an issue in it, and

10 (Pages 34 to 37)

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1 you know, as to who made the error, it's very  
 2 difficult to say.  
 3 Q. As to...  
 4 A. As to who made the error. It was -- the  
 5 model basically was flawed.  
 6 Q. Who put the model together?  
 7 A. I don't know who the names are, who --  
 8 the exact people who built the model.  
 9 Q. What entity put the model together?  
 10 A. Provident.  
 11 MS. PERRY: Objection to foundation.  
 12 A. Our folks as well as E&Y.  
 13 Q. So E&Y had some input into building the  
 14 model, correct?  
 15 MR. BURKE: Objection. Calls for  
 16 speculation.  
 17 MS. PERRY: Objection. Foundation.  
 18 MR. BURKE: No foundation.  
 19 A. Yeah, I mean, I really wasn't involved  
 20 in building the model, so...  
 21 Q. Mr. Hoverson --  
 22 A. That model is PFGI's responsibility.  
 23 Q. Mr. Hoverson, did E&Y have some input  
 24 into building the model?

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1 MS. PERRY: Objection.  
 2 MR. BURKE: Objection. Asked and  
 3 answered.  
 4 MS. PERRY: Lacks foundation; also asked  
 5 and answered.  
 6 A. Frankly, I don't know.  
 7 Q. Was E&Y auditing its own work?  
 8 MR. BURKE: Objection. Speculation.  
 9 MS. PERRY: Also vague.  
 10 A. Yeah, I don't know what that means. E&Y  
 11 audits our work.  
 12 Q. Mr. Hoverson, how can you not know if  
 13 E&Y had some input into the model as the CEO and  
 14 acting chairman of the board of Provident?  
 15 MR. BURKE: Objection.  
 16 MS. PERRY: Objection.  
 17 MR. BURKE: Form.  
 18 MS. PERRY: Foundation; argumentative.  
 19 A. I don't know if E&Y had any involvement  
 20 or not.  
 21 Q. Did you ever --  
 22 A. That's a fact. Okay? I don't know.  
 23 Q. Isn't that of concern to you?  
 24 MR. BURKE: Objection to form. Isn't

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1 what of concern to him?  
 2 A. No.  
 3 Q. Why not?  
 4 MR. BURKE: Objection to form.  
 5 A. I don't know how to answer that  
 6 question.  
 7 Q. So Mr. Hoverson, if I understand your  
 8 testimony correctly, you're saying as Provident's  
 9 acting chairman of the board, as its chief  
 10 executive officer, it's of no concern to you  
 11 whether E&Y had input into creating the model that  
 12 E&Y was then auditing?  
 13 MR. BURKE: Objection. That's a knowing  
 14 misstatement of what he just testified to, and  
 15 you know that, Mr. Brautigam.  
 16 Mischaracterizes his prior testimony.  
 17 A. If you'd like to ask me a question, I'll  
 18 be glad to tell you, you know, but don't tell me  
 19 what I said when it's not what I said. Here's what  
 20 I said. I don't know if E&Y had anything to do  
 21 with the model or not, period.  
 22 Q. Is that of concern --  
 23 A. Period.  
 24 Q. -- to you --

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1 A. Period.  
 2 Q. -- as Provident's acting chairman of the  
 3 board and chief executive officer?  
 4 A. I previously answered that question.  
 5 Q. What was your answer?  
 6 A. No.  
 7 Q. Why not?  
 8 A. Just not.  
 9 Q. Do you believe that the restatement in  
 10 2003 affected Provident's prospects?  
 11 MR. BURKE: Objection to form.  
 12 A. Yeah. What's that mean?  
 13 Q. As it's used in the fairness opinion.  
 14 A. I don't know what's used in the fairness  
 15 opinion.  
 16 Q. Mr. Hoverson, it's right in front of  
 17 you. You can pick it up if you like.  
 18 A. I can't answer that question did it --  
 19 how did -- did it affect our prospects. You'd have  
 20 to define what that means. You've got to define it  
 21 to me. Okay? Ask me a question. I will answer  
 22 the question.  
 23 Q. Mr. Hoverson, did you ever read Annex C  
 24 to Defendants' Exhibit 1?

11 (Pages 38 to 41)

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1 MR. BURKE: Objection. Already asked  
 2 and answered.  
 3 A. I don't know that I did.  
 4 Q. Do you know what the word --  
 5 A. I wouldn't have had any reason to. It's  
 6 not addressed to me.  
 7 Q. Did you read the fairness opinion that  
 8 Provident obtained with respect to the National  
 9 City merger?  
 10 MR. BURKE: Objection to relevance. You  
 11 may answer.  
 12 A. I did.  
 13 Q. Did that deal with prospects at all?  
 14 A. I don't remember. It was more focused  
 15 on the valuation, whether or not, you know,  
 16 comfortable with the valuation.  
 17 Q. Turn to page 3 of the fairness opinion,  
 18 please. Would you read that first sentence into  
 19 the record, please?  
 20 A. The IX?  
 21 Q. In our review.  
 22 A. You want me to read the whole thing?  
 23 Q. I want you to read the first sentence  
 24 into the record, please.

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1 A. Oh, the first sentence. In our review  
 2 and analysis in arriving at our opinion, we have  
 3 assumed and relied upon the accuracy and  
 4 completeness of all the financial and other  
 5 information reviewed by us and relied upon the  
 6 accuracy and completeness of the (inaudible).  
 7 MR. BURKE: There's no reason for him --  
 8 I mean, it's in the record.  
 9 A. In the record. PFGI contained in the  
 10 agreement.  
 11 Q. The financial information that Provident  
 12 provided was not accurate, correct?  
 13 MR. BURKE: Objection. Argumentative;  
 14 asked and answered.  
 15 A. I've answered this.  
 16 Q. Mr. Hoverson, please --  
 17 A. Would you like me to answer it again the  
 18 way I've answered it ten times?  
 19 Q. No, you haven't answered it ten times.  
 20 I'd just like you to answer my question. We're  
 21 talking about a specific question --  
 22 A. I said it before and I'll say it again.  
 23 Q. -- in the context of this document.  
 24 A. We restated our numbers in 1997. Okay?

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1 And that included numbers back to '97 -- I mean in  
 2 2003 and that affected numbers back to '97, '98,  
 3 and '99.  
 4 Q. Mr. Hoverson, please take page 3, and  
 5 keep it in front of you.  
 6 A. Um-hum.  
 7 Q. Do you see that it says that McDonald,  
 8 as OHSL's investment banker, relied upon the  
 9 accuracy of all the financial information that  
 10 Provident provided?  
 11 MR. BURKE: Objection.  
 12 Q. Do you see that?  
 13 MR. BURKE: Document speaks for itself.  
 14 Go ahead. Next question.  
 15 A. Yeah, I see that.  
 16 Q. The information that Provident provided  
 17 was not accurate, correct?  
 18 MR. BURKE: Objection. Argumentative;  
 19 asked and answered. You may answer again.  
 20 THE WITNESS: Do I really have to answer  
 21 the same question 50 times?  
 22 MR. BURKE: No, you don't, but I mean,  
 23 you know, we're going to go one more time and  
 24 then that's it. You asked this question 15.

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1 times, Mr. Brautigam.  
 2 A. Would you like me to answer it the same  
 3 way I've answered it before?  
 4 Q. No. I would just like you to answer the  
 5 question --  
 6 A. That's the answer I'm going to give you.  
 7 Q. Mr. Hoverson, it's a different  
 8 question.  
 9 MR. BURKE: That's not a different  
 10 question. That's the same question, and he'll  
 11 give you the same answer.  
 12 A. It is the same question.  
 13 MR. BRAUTIGAM: We're going to call the  
 14 Judge, right now.  
 15 MR. BURKE: That's fine.  
 16 (Mr. Brautigam makes phone call,  
 17 receives recorded message, and leaves the  
 18 following message.)  
 19 MR. BRAUTIGAM: Hi, Barbara. This is  
 20 Mike Brautigam. I'm here with Jim Burke and  
 21 some other counsel, and there's other counsel  
 22 on the phone telephonically.  
 23 We're having a problem at the  
 24 deposition, and we would like to run the

12 (Pages 42 to 45)

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1 problem by Magistrate Judge Hogan.

2 If he could give us a call back at  
3 221-8800, we would all appreciate it. Thank  
4 you very much.

5 MR. BURKE: For the record, this is Jim  
6 Burke. I do not believe we're having a  
7 problem, but if Mr. Brautigam -- and no one  
8 else is thinking there's a problem, nor  
9 consenting to the Judge's involvement, but if  
10 Mr. Brautigam wants to involve the Judge,  
11 that's his prerogative.

12 MR. BRAUTIGAM: Okay.

13 MR. BURKE: Thank you.

14 MR. BRAUTIGAM: We'd appreciate a call  
15 back at your earliest convenience.

16 (Ended phone call.)

17 BY MR. BRAUTIGAM:

18 Q. Mr. Hoverson, if you refuse to answer my  
19 questions or if you continue to answer questions in  
20 this way and Mr. Burke continues to make speaking  
21 objections, I'm going to abort this deposition, and  
22 we'll have to come back.

23 MR. BURKE: Mr. Brautigam, you do what  
24 you want. This witness has answered every

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1 counsel and the witness that we should not be  
2 speaking at the same time so that we can have  
3 a clear and accurate record.

4 Now, would you please find the last  
5 question and read it back.

6 (The question was read back.)

7 BY MR. BRAUTIGAM:

8 Q. Mr. Hoverson, page 3 of the fairness  
9 opinion. The information that Provident provided  
10 was not accurate, correct?

11 MR. BURKE: Objection. Asked and  
12 answered. You may answer again.

13 A. I mean, again, I'm answering the  
14 question, and you know I'm answering the  
15 question. We restated our numbers in March of  
16 2003, and that included changing the numbers from  
17 '97, '98, '99, and forward. Okay? Those are  
18 facts. You put your interpretation on that.  
19 That's a fact.

20 Q. Mr. Hoverson, and you changed --

21 A. I'm not going to interpret it. Okay?  
22 That's factual and I'm answering the question. All  
23 right?

24 Q. Mr. Hoverson --

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1 question. No one's making speaking  
2 objections.

3 Your questions are repetitive, and he's  
4 told you repeatedly what he can say and what  
5 he can't say and what he's not prepared to  
6 say.

7 If you want to abort the deposition, you  
8 go right ahead, but you can't force this  
9 witness to answer as you would have him  
10 witness.

11 All he can do is answer to the best of  
12 his ability, which he's done. If you don't  
13 like it, that's too bad.

14 MR. BRAUTIGAM: Jim, we don't need a  
15 speaking objections.

16 MR. BURKE: That's not a speaking  
17 objection. That's a statement of my position  
18 for the record. You stated yours. I stated  
19 mine.

20 Go ahead and abort of deposition if you  
21 so choose. This witness is going to answer  
22 the questions to the best of his ability,  
23 period.

24 MR. BRAUTIGAM: I'd like to remind all

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1 A. I don't know how to get into discussing  
2 what was accurate and not accurate in 1999. Okay?

3 Q. Mr. Hoverson, do you know what the word  
4 "accurate" means?

5 MR. BURKE: Objection to relevance. You  
6 may answer.

7 A. Um-hum. Relating to what?

8 Q. Relating to OHSL-Provident merger.

9 A. What does that mean? What does that  
10 mean?

11 Q. Mr. Hoverson, can you answer my  
12 question? If you can't answer, that's fine.

13 A. Okay. I don't think I can answer that  
14 question.

15 Q. Do you know what the word "complete"  
16 means?

17 A. I do.

18 Q. What does it mean?

19 MR. BURKE: Objection to form;  
20 relevance. You may answer.

21 A. Yeah. As it relates to what?

22 Q. As it relates to the OHSL-Provident  
23 merger and as the word "completeness" is used on  
24 page 3 of the fairness opinion that's attached to

13 (Pages 46 to 49)

Page 50

1 Defendants' Exhibit 1.  
 2 A. Okay. So let's go. Where's it at?  
 3 Q. It's in the second line of the first  
 4 full paragraph.  
 5 A. So what's your question?  
 6 Q. Do you know what the word "completeness"  
 7 means in general?  
 8 MR. BURKE: Objection to form. Vague,  
 9 relevance.  
 10 A. I suppose I do.  
 11 Q. What does it mean?  
 12 A. In general?  
 13 Q. In general.  
 14 A. It means it's complete.  
 15 Q. What does the word "complete" mean in  
 16 the context of the OHSL-Provident merger?  
 17 MR. BURKE: Objection. Vague; form.  
 18 A. That the data we provided was complete.  
 19 Q. Was the data that Provident provided  
 20 complete?  
 21 A. Yes.  
 22 Q. Was there anything wrong with the data?  
 23 A. As it turned out in 2003, we restated  
 24 the number; and so that number, you know, was

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1 Q. To what were you referring?  
 2 MR. BURKE: Objection. What are you  
 3 talking about?  
 4 A. Fairness. What are you referring to?  
 5 Q. Were you referring to the fairness  
 6 opinion?  
 7 A. Yeah.  
 8 Q. Okay. Do you believe that Defendants'  
 9 Exhibit 1 is your document?  
 10 A. Yeah, I'm not sure I know how to answer  
 11 that question. Obviously, we signed off on the  
 12 proxy, and all the data that we supplied I'm very  
 13 comfortable was, you know, our material. And, you  
 14 know, it's a proxy, so I guess it is -- I'm not  
 15 really sure I know how to answer that question from  
 16 a legal standpoint.  
 17 Q. I'm not asking for a legal standpoint.  
 18 A. That's a legal document.  
 19 Q. Mr. Hoverson, you certainly signed  
 20 public documents that are filed through the SEC,  
 21 correct?  
 22 A. I do.  
 23 Q. And this is one of them, correct?  
 24 A. Yes.

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1 restated in 2003. That's a fact.  
 2 Q. Now, Mr. Hoverson, are fairness opinions  
 3 in general a recommendation as to how shareholders  
 4 should vote?  
 5 MR. BURKE: Objection. Relevance;  
 6 speculation.  
 7 A. They're used -- I'm not sure I would say  
 8 it exactly that way. They're more of a commentary  
 9 that the valuation being discussed is fair.  
 10 Q. Okay. Was that the case with respect to  
 11 the fairness opinion provided in the OHSL-Provident  
 12 merger?  
 13 MR. BURKE: Objection. Foundation. You  
 14 may answer.  
 15 A. I assume that, you know, it was, sure.  
 16 Q. Mr. Hoverson, I don't want you to  
 17 assume. It says it right in the document, doesn't  
 18 it?  
 19 MR. BURKE: Objection.  
 20 A. It's not my document, you know, but, you  
 21 know...  
 22 Q. Mr. Hoverson, when you said it's not  
 23 your document, to what were you referring?  
 24 A. That I didn't write it.

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1 Q. And this was a joint document coming  
 2 from OHSL and Provident, correct?  
 3 A. Um-hum.  
 4 Q. Yes?  
 5 A. Yes.  
 6 Q. And you were the CEO of Provident at the  
 7 time, correct?  
 8 A. Yes.  
 9 Q. And you were on Provident's board at the  
 10 time, correct?  
 11 A. Um-hum.  
 12 Q. Yes?  
 13 A. Yes.  
 14 Q. And as a result, this document came in  
 15 part from you, correct?  
 16 A. Yes.  
 17 Q. What is a registration statement?  
 18 MR. BURKE: Objection. Calls for a  
 19 legal conclusion. You may answer if you know.  
 20 A. Yeah, I'm not sure I know the technical  
 21 answer to that. Typically, you would register if  
 22 it's a public document.  
 23 Q. Was there a registration statement used  
 24 in this case?

14 (Pages 50 to 53)

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1 A. You're getting -- you're out of my area  
2 of expertise. I really don't know how to answer  
3 that question.  
4 Q. Please describe the terms of the OHSL  
5 and Provident merger.  
6 A. I don't remember the terms. It was a  
7 stock deal. I don't recall. I'm vague on the  
8 terms of the price for -- as I recall, had a collar  
9 on it, but I don't remember the exact terms. Quite  
10 frankly, it was five years ago.  
11 Q. I understand. Let me be more general.  
12 This was a stock for stock transaction --  
13 A. Right.  
14 Q. -- correct?  
15 A. Um-hum.  
16 Q. Yes?  
17 A. Yes.  
18 Q. And Provident was paying for OHSL with  
19 newly issued Provident stock, correct?  
20 A. Yes.  
21 Q. And pursuant to this new issuance of  
22 Provident stock, a registration statement was  
23 required, correct?  
24 A. I assume so.

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1 Q. You know so, correct?  
2 A. Okay.  
3 Q. Because you signed the registration  
4 statement that was filed with the SEC, correct?  
5 A. Okay, yes.  
6 Q. Are you familiar with the term  
7 "artificial inflation" as it applies to a company's  
8 stock?  
9 A. No.  
10 Q. Have you ever heard the term "artificial  
11 inflation"?  
12 A. You just said it.  
13 Q. Before I just said it, have you ever  
14 heard the term?  
15 A. Not as a term of art, no.  
16 Q. Are you familiar with the concept of a  
17 company stock being materially overvalued?  
18 MR. BURKE: Objection to form. Vague.  
19 A. I'm not sure.  
20 MR. BURKE: Calls for speculation.  
21 A. I don't know how to answer the question.  
22 You'd have to give me context and stuff, but --  
23 what's the question? I don't know how to determine  
24 what an overvalue is.

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1 Q. The question didn't go to that at all,  
2 Mr. Hoverson.  
3 MR. BRAUTIGAM: Would you read the  
4 question back, please.  
5 MR. BURKE: I'm going to object. I  
6 think the question did go exactly to that, but  
7 you may answer.  
8 (The question was read back.)  
9 A. Frankly, I don't know.  
10 Q. Have you ever heard that a company stock  
11 was materially overvalued?  
12 MR. BURKE: Objection. Form; value;  
13 calls for speculation.  
14 A. I don't know.  
15 Q. Was Provident stock materially  
16 overvalued up to and including March 4th of 2003?  
17 A. No.  
18 Q. Why not?  
19 A. I don't know how to answer that  
20 question, why not. It was fairly valued.  
21 Q. On March 4th, 2003, it's your testimony  
22 the Provident stock was fairly valued?  
23 A. I thought you meant -- oh, I'm sorry.  
24 Restate the previous question. I thought you were

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1 talking about '99.  
2 Q. Mr. Hoverson, do you want me to reread  
3 it, or do you want me to restate it?  
4 A. Reread it.  
5 (The question was read back.)  
6 A. No. Stocks are valued based upon the  
7 information in the public domain.  
8 Q. And that's sometimes referred to as the  
9 efficient market hypothesis, correct?  
10 MR. BURKE: Objection. Calls for  
11 speculation.  
12 A. Um-hum.  
13 Q. Mr. Hoverson, it really would be helpful  
14 for the record if you could answer the questions  
15 yes or no as instead of um-hum. You don't have to  
16 limit your answers in most cases to yes or no, but  
17 just so we have a clear record. Okay?  
18 MR. BURKE: Go ahead.  
19 A. Okay.  
20 Q. My question went to Provident stock on  
21 March 4th, 2003. As part of your duties and  
22 responsibilities, you followed Provident stock,  
23 correct?  
24 A. I do.

15 (Pages 54 to 57)

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1 Q. And you certainly followed Provident  
2 stock in the days and perhaps hours leading up to  
3 the announcement of the restatement, correct?

4 A. Um-hum.

5 Q. Is that yes?

6 A. Yes.

7 Q. And you had to be very careful as the  
8 chief executive officer and acting chairman of the  
9 board not to allow information about the future  
10 restatement leak out before Provident announced it  
11 to the world, correct?

12 A. We were very careful.

13 Q. Why were you very careful?

14 A. Well, it's the prudent thing to do.

15 Q. And you testified a moment ago that  
16 Provident stock, in your opinion, was not  
17 materially overvalued on March 4th of 2003,  
18 correct?

19 A. What I said was that it was valued  
20 fairly based upon the information in the market.

21 Q. Right. And on March 4th, 2003 --

22 A. That's all I'm going to say. I mean, it  
23 was.

24 Q. And on March 4th, 2003, the information

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1 A. That the stock would go down.

2 Q. Did you believe that the stock would go  
3 down in a material way?

4 MR. BURKE: Objection.

5 A. No way to determine that, frankly.

6 Q. How much --

7 A. We did not have an expectation, you  
8 know, on that. We knew it would adversely affect  
9 it, but we didn't know how much.

10 Q. Mr. Hoverson, you used "we" in your  
11 previous answer. You understand that today I want  
12 your opinion unless I ask for the opinion of  
13 others. Okay?

14 A. I understand, Counsel.

15 Q. Thank you. Now, Mr. Hoverson, did you  
16 expect that Provident stock would decrease by a  
17 material amount when you made the first restatement  
18 announcement?

19 MR. BURKE: Objection. Asked and  
20 answered.

21 A. I expected the stock would decline in  
22 value when we made the announcement.

23 Q. Why did you expect the stock to decline  
24 in value?

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1 in the marketplace was not accurate, correct?

2 MR. BURKE: Objection. Calls for  
3 speculation.

4 A. Yeah, I'm not gonna -- I'm not gonna --  
5 that's a -- that's a crazy question. The  
6 information in the market is what it is until we  
7 publicly file, you know, with new information.

8 There's no other way to kind of answer  
9 that question because all of this is done in the  
10 context of what's, you know, available to  
11 everybody. It's either available to everybody or  
12 to nobody.

13 Q. Mr. Hoverson, you said that that was a  
14 crazy question. Why?

15 MR. BURKE: Objection. Vague.

16 A. It doesn't make any sense. The stock is  
17 based -- its value is based upon the public -- the  
18 information that is available in the public  
19 marketplace.

20 Q. Mr. Hoverson, before you announced the  
21 restatement, did you have an expectation as to what  
22 impact, if any, it would have on the stock price?

23 A. We did.

24 Q. What was your expectation?

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1 A. It was, you know, a negative event.

2 Q. Did you, therefore, conclude that the  
3 information that was available in the public  
4 marketplace up to March 5th, 2003, was materially  
5 misstated?

6 MR. BURKE: Objection.

7 A. No.

8 MR. BURKE: Calls for speculation.

9 A. That's a crazy question. You know it's  
10 a crazy question. You know, the information was  
11 not in the public domain until we made it -- put it  
12 in the public domain, you know. You understand  
13 that totally.

14 Q. And this --

15 A. And nothing required us to put it in the  
16 public domain until we were ready to put it in the  
17 public domain, and you know that as well.

18 Q. And this is material information that  
19 you're talking about, correct?

20 MR. BURKE: Objection. Calls for  
21 speculation.

22 A. It was information we deemed obviously  
23 needed to be in the public domain once we released  
24 it.

16 (Pages 58 to 61)

Page 62

1 Q. And you deemed that it needed to be in  
2 the public domain because you deemed it to be  
3 material information, correct?

4 MR. BURKE: Objection. Calls for  
5 speculation. You're badgering the witness,  
6 Mr. Brautigam. You may answer.

7 A. What's material and what's not material,  
8 you know, obviously it needed to be disclosed.

9 Q. Mr. Hoverson --

10 A. It's required to be disclosed.

11 Q. You're able to read and interpret  
12 Provident board minutes, correct?

13 A. Um-hum.

14 Q. Yes?

15 A. Yes.

16 Q. Does the word "material" appear in  
17 Provident board minutes?

18 MR. BURKE: Objection. Vague.

19 A. I don't know. I'd have to see them.

20 Q. Okay. Well, I'll show them to you  
21 later, but do you believe that the word "material"  
22 was used at Provident board meetings?

23 MR. BURKE: Objection. Calls for  
24 speculation. You can answer.

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1 Q. Okay. And when it was uttered in a  
2 board meeting, did you understand what it meant?

3 MR. BURKE: Objection. Vague.

4 A. I would like to think I did.

5 Q. What did it mean?

6 A. It's a general question. We're not  
7 talking about a specific event.

8 MR. BURKE: Objection. Vague.

9 A. Yeah, I don't know how to answer that.

10 Q. Mr. Hoverson, you said that the word  
11 "material" was used in board meetings. You said  
12 that you knew what it meant when it was used in  
13 board meetings. Please tell me what your  
14 understanding --

15 A. Because when it's used --

16 Q. Mr. Hoverson --

17 A. When the word's used in relation to a  
18 context, I can -- you know, I made an  
19 interpretation as to what it meant.

20 Q. Mr. Hoverson, I'd just like to remind  
21 you, I will try not to step on your answers if you  
22 try not to step on my questions, and we really  
23 should not be speaking at the same time. Okay?

24 Now, my question was when you were at

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1 A. I'd have to see them.

2 Q. That's not whether it's in the minutes  
3 or not.

4 A. I don't remember.

5 Q. It's a different question.

6 A. I don't remember.

7 Q. As you sit here today, it's your  
8 testimony that you don't remember the word  
9 "material" being used at Provident board meetings?

10 MR. BURKE: Objection.

11 A. I don't remember if it was used or not.

12 Q. Ever?

13 A. To the beginning of time?

14 Q. To the beginning of your service on the  
15 board.

16 MR. BURKE: Objection. Vague.

17 A. I have no idea. Okay?

18 Q. Mr. Hoverson --

19 A. Was the word ever uttered in the board  
20 meeting?

21 Q. Yes.

22 A. The word "material"?

23 Q. Yes.

24 A. I'm sure it was.

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1 Provident board meetings and the word "material"  
2 was used, what did you understand it to mean?

3 MR. BURKE: Objection. Vague; calls for  
4 speculation.

5 A. Yeah.

6 MR. BURKE: No context. You may answer.

7 A. I don't know how to answer that  
8 question.

9 Q. Okay. Why not?

10 A. It's too vague.

11 Q. Okay. Let's see if I can focus you.

12 The financial statements of a public company such  
13 as Provident are the responsibility of management,  
14 correct?

15 A. Right.

16 Q. And management strives to present to its  
17 independent auditors financial statements that are  
18 free of material misstatement, correct?

19 A. Right.

20 MR. BURKE: Objection.

21 Q. And that concept has been discussed at  
22 board meetings that you attended and at audit  
23 committee meetings where you made presentations,  
24 correct?

17 (Pages 62 to 65)

Page 66

1 MR. BURKE: Objection. Calls for  
 2 speculation. You may answer.  
 3 A. Actually, I've not made any  
 4 presentations to the audit committee, but sure, in  
 5 general.  
 6 Q. Did you ever address the audit committee  
 7 in your career with Provident?  
 8 A. Yes.  
 9 Q. And did you address the audit committee  
 10 specifically during the -- in the meetings leading  
 11 up to the restatements?  
 12 A. Yes.  
 13 Q. Were these not formal presentations; is  
 14 that what you meant?  
 15 A. Yeah, I thought you meant on a regular  
 16 basis with the audit committee. I don't meet with  
 17 the audit committee on a regular basis.  
 18 Q. No, I understand. But with respect to  
 19 exceptional events --  
 20 A. Yeah, sure.  
 21 Q. -- you have addressed the audit  
 22 committee?  
 23 A. Sure.  
 24 Q. Now, everyone at Provident was striving

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1 A. Yes.  
 2 Q. How did that process work?  
 3 A. I, you know, don't have specific  
 4 recollection of it, but it -- you know, we would  
 5 have had our credit people look at their credit  
 6 files. We would have had our audit staff review  
 7 any audit, you know, papers they had as well as  
 8 loan data; and our finance people would have, you  
 9 know, reviewed their books.  
 10 Q. Similarly, did OHSL people or people  
 11 acting on their behalf review Provident's financial  
 12 statements?  
 13 MR. BURKE: Objection. Foundation. You  
 14 may answer.  
 15 A. I would assume they did.  
 16 Q. What was the purpose of that?  
 17 A. You know, an analysis of the situation  
 18 to make an evaluation.  
 19 Q. And we've determined in part through our  
 20 discussion of the fairness opinion that McDonald  
 21 and OHSL relied on the accuracy and completeness of  
 22 Provident's financial statements in 1999, correct?  
 23 MR. BURKE: Objection. Calls for  
 24 speculation. You may answer.

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1 to produce statements that were free of material  
 2 misstatement, correct?  
 3 MR. BURKE: Objection. Calls for  
 4 speculation. You may answer.  
 5 A. Yeah, everybody at Provident strives to  
 6 produce accurate statements.  
 7 Q. Are accurate statements, in your view,  
 8 the same as financial statements that are free of  
 9 material misstatements?  
 10 MR. BURKE: Objection. Argumentative.  
 11 A. Yes.  
 12 Q. So is it fair to use the word accurate  
 13 and free of material misstatement interchangeably?  
 14 MR. BURKE: Objection. Vague; calls for  
 15 speculation; argumentative. You may answer.  
 16 A. Yeah, in certain contexts, I'm sure it  
 17 is.  
 18 Q. Okay. Are you familiar with the phrase  
 19 "due diligence"?  
 20 A. Yeah, we've...  
 21 MR. BURKE: Objection. Vague.  
 22 A. ...answered this, yes.  
 23 Q. Was there a due diligence process with  
 24 respect to the OHSL-Provident merger?

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1 A. Yes, I believe we have.  
 2 Q. And we now know that Provident's  
 3 financial information that was provided to OHSL and  
 4 that Provident expected OHSL shareholders to rely  
 5 on was not accurate and was not complete, correct?  
 6 MR. BURKE: Objection. Mischaracterizes  
 7 prior testimony; assumes facts not in  
 8 evidence. You may answer.  
 9 A. Again, I'm going to answer this question  
 10 a ton of times. We restated those numbers in 2003,  
 11 so obviously they changed when we restated them.  
 12 Q. And they changed in a way that rendered  
 13 the numbers that were included in Defendants'  
 14 Exhibit 1 inaccurate and incomplete, correct?  
 15 MR. BURKE: Objection.  
 16 A. They changed the numbers. They did  
 17 change the numbers.  
 18 Q. Have we agreed that the fairness opinion  
 19 does not constitute a recommendation to  
 20 shareholders with respect to the OHSL-Provident  
 21 merger?  
 22 MR. BURKE: Objection.  
 23 A. I don't know that we've agreed. All I  
 24 said was that it's, you know, an opinion as to

18 (Pages 66 to 69)

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1 value to the board.  
 2 Q. Would you --  
 3 A. The board makes the recommendation to  
 4 the shareholders.  
 5 Q. Would you read the last paragraph on  
 6 page 3 going over to page 4 to yourself, please.  
 7 A. The last starting with, "This opinion"?  
 8 Q. Yes, sir.  
 9 A. (Witness complies.) Okay.  
 10 Q. Now, it states there quite specifically  
 11 that the fairness opinion provided by McDonald does  
 12 not constitute a recommendation as to how to vote,  
 13 correct?  
 14 A. Right.  
 15 Q. And it also --  
 16 A. To the shareholders.  
 17 Q. Correct. And it also says that it does  
 18 not compare or discuss the relative merits of any  
 19 competing proposal or any other business strategy,  
 20 correct?  
 21 MR. BURKE: Objection. Document speaks  
 22 for itself. It says what it says.  
 23 A. (Examining document.) Yeah, it says it  
 24 doesn't compare or discuss the relative merits of a

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1 competing proposal. I see that it says that, or  
 2 other terms of the merger.  
 3 Q. Mr. Hoverson, you agree that the  
 4 fairness of a transaction is a separate concept  
 5 from the transaction being or not being in the best  
 6 interest of the shareholders, correct?  
 7 MR. BURKE: Objection. Calls for  
 8 speculation; vague.  
 9 A. Yeah, I don't know how to answer that.  
 10 Q. Okay. Let's take a look at --  
 11 A. It is what it is.  
 12 Q. Let's take a look at the first page of  
 13 Defendants' Exhibit 1. Would you read the  
 14 sentence, Your board of directors unanimously  
 15 approved the acquisition, to yourself, please.  
 16 A. (Examining document.) Okay.  
 17 Q. Do you agree that the first sentence  
 18 constitutes two different concepts: The first  
 19 concept being unanimously approved the acquisition,  
 20 and the second concept unanimously believes that it  
 21 is in the best interest of OHSL stockholders?  
 22 MR. BURKE: Objection. Calls for  
 23 speculation; calls for a legal conclusion; and  
 24 I think you're trying to get him to

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1 reinterpret the document different from what  
 2 the language actually says. You may answer.  
 3 MR. BRAUTIGAM: Jim, we're doing  
 4 fine. We don't need speaking objections.  
 5 MR. BURKE: It's not a speaking  
 6 objection.  
 7 A. Yeah, I don't know that I would agree  
 8 with your interpretation. It seems to me that if  
 9 you thought it was in the best interest -- you  
 10 know, you wouldn't approve it unless you thought it  
 11 was in their best interest, but, you know, I don't  
 12 know.  
 13 Q. All right. Let's break down the  
 14 sentence. Your board of directors unanimously  
 15 approved the acquisition, stop.  
 16 A. This is not my board, by the way.  
 17 Q. I understand that, but that's what the  
 18 sentence says.  
 19 MR. BURKE: The document speaks for  
 20 itself.  
 21 Q. Mr. Hoverson, are you focused on the  
 22 first part of that sentence?  
 23 A. Um-hum.  
 24 Q. Okay. What was your understanding in

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1 1999 as to how many directors voted to approve the  
 2 OHSL-Provident merger?  
 3 MR. BURKE: Objection. Foundation. You  
 4 may answer.  
 5 A. I do not have a specific memory of that.  
 6 Q. Did you ever learn that not all of the  
 7 OHSL directors had voted to approve the merger?  
 8 MR. BURKE: Objection. Misstates the  
 9 record; mischaracterizes the evidence.  
 10 A. Always relates to, you know, the issue  
 11 -- the argument you have made. I don't remember --  
 12 to be honest with you, I don't remember that much  
 13 about that, because it wouldn't have been that  
 14 important to me. They either approved it or they  
 15 didn't. It was unanimous approval, so...  
 16 Q. You understand what the phrase  
 17 "unanimous approval" means, correct?  
 18 MR. BURKE: Objection.  
 19 A. I believe I do.  
 20 Q. In fact, the concept of unanimous  
 21 approval is included in the Provident National City  
 22 financial materials, correct?  
 23 A. If you say it is.  
 24 Q. You know that, correct?

19 (Pages 70 to 73)

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1 A. I don't recall every word.  
 2 Q. I didn't ask you to recall every word,  
 3 Mr. Hoverson.  
 4 A. It was unanimously approved, if that's  
 5 the question.  
 6 Q. Okay. And also, the concept of  
 7 unanimous approval is included in the OHSL --  
 8 excuse me -- the Provident-National City merger,  
 9 correct?  
 10 A. Yeah. I just said it was unanimously  
 11 approved.  
 12 Q. And it was also included in the proxy  
 13 materials, correct?  
 14 A. I don't remember every word.  
 15 MR. BURKE: Objection.  
 16 A. Okay?  
 17 MR. BURKE: What are we talking about?  
 18 A. You know, if it is, it is.  
 19 MR. BURKE: Can we take five minutes for  
 20 a bathroom break, please?  
 21 MR. BRAUTIGAM: Certainly.  
 22 (A brief break was taken from 11:40 to  
 23 11:45.)  
 24

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1 voted for it.  
 2 Q. Was everybody there?  
 3 A. Everybody was there.  
 4 Q. And how many directors does Provident  
 5 have? Seven, correct?  
 6 A. Six counting me.  
 7 Q. And all six of the directors voted in  
 8 favor of the merger, correct?  
 9 A. Yes, everybody that was there. They all  
 10 -- they were all there.  
 11 Q. Okay. Do you believe that unanimously  
 12 recommending shareholder approval is a different  
 13 concept from the concept that the board of  
 14 directors unanimously approved the merger?  
 15 MR. BURKE: Objection to form. Are you  
 16 referring to that document still?  
 17 MR. BRAUTIGAM: Yes.  
 18 MR. BURKE: Show him what you're  
 19 referring to.  
 20 A. What's the question again?  
 21 MR. BURKE: I didn't follow it either.  
 22 Q. Certainly. Would you read  
 23 recommendation on page 4 to yourself, please.  
 24 A. (Examining document.) Okay.

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1 BY MR. BRAUTIGAM:  
 2 Q. Back on the record, Mr. Hoverson. I'd  
 3 just like to remind you if you would try not to  
 4 step on my questions, I will try not to step on  
 5 your answers.  
 6 Mr. Hoverson, the first line of the  
 7 proxy materials registration -- excuse me -- the  
 8 proxy materials for the Provident-National City  
 9 merger reads, The board of directors of Provident  
 10 Financial Group, Inc., has unanimously approved the  
 11 merger of Provident with and into National City  
 12 Corporation. Does that refresh your recollection?  
 13 MR. BURKE: Can he see the document?  
 14 MR. BRAUTIGAM: Absolutely.  
 15 MR. BURKE: Are we going to mark this as  
 16 an exhibit or --  
 17 MR. BRAUTIGAM: No, because it's  
 18 mine. I asked Rachael for some extra copies,  
 19 and she refused to provide them to me, so...  
 20 MR. BURKE: So you can't copy it?  
 21 A. Okay.  
 22 Q. What does it mean that the board of  
 23 Provident unanimously approved the merger?  
 24 A. Well, you know, everybody who was there

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1 Q. And the concept that's embraced there is  
 2 that the Provident directors unanimously recommend  
 3 that Provident shareholders vote for the merger,  
 4 correct?  
 5 A. That's what it says.  
 6 Q. And what does that mean to you?  
 7 A. It means they recommend they vote for  
 8 it.  
 9 Q. And that means that each director  
 10 recommends that the shareholders vote for it,  
 11 correct?  
 12 MR. BURKE: Objection. You may answer.  
 13 A. I guess it would technically mean each  
 14 director who voted -- who was there and voted  
 15 unanimously recommends that, yes.  
 16 Q. Because they --  
 17 A. They all -- all the people who voted  
 18 recommended.  
 19 Q. And --  
 20 A. I think that's what that means.  
 21 Q. There's another concept here that  
 22 Provident's board of directors believes that the  
 23 merger is in the best interest of Provident  
 24 shareholders. Do you see that?

20 (Pages 74 to 77)

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1 A. Yeah, I saw that.  
 2 Q. Do you understand that concept to mean  
 3 that all of Provident's directors believed that the  
 4 merger with National City was in the best interest  
 5 of Provident shareholders?  
 6 A. Again, if you want to get technical, I  
 7 guess what it means is that the directors who were  
 8 present and voted also unanimously recommend and  
 9 think it's in the best interest of the  
 10 shareholders. That's what it means.  
 11 Q. Did you vote your personal shares in the  
 12 Provident-National City merger?  
 13 A. I did.  
 14 Q. Did you vote in favor of the merger?  
 15 A. I did.  
 16 Q. Do you know how the other directors  
 17 voted their personal shares?  
 18 A. I don't.  
 19 Q. Do you have an expectation as to how  
 20 they would have voted their shares?  
 21 A. I would have expected that they voted  
 22 for it, but I don't know that they all did.  
 23 Q. Okay. Do you believe that all of the  
 24 OHSL directors voted in favor of the OHSL-Provident

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1 Q. That's a little bit different than what  
 2 I thought you said with respect to Provident board  
 3 meetings.  
 4 A. No, it's not.  
 5 MR. BURKE: No, it's not at all.  
 6 Q. Okay.  
 7 MR. BURKE: It's exactly the same thing  
 8 he said.  
 9 Q. Tell me how many --  
 10 A. I didn't say it that way, but it's the  
 11 same thing.  
 12 Q. Okay. Tell me what number of directors  
 13 you believe voted in favor of the OHSL-Provident  
 14 merger based on that first sentence.  
 15 MR. BURKE: Objection.  
 16 A. I don't know the number. All the  
 17 directors who voted in favor of it is what that  
 18 says to me. I don't know how many voted on it.  
 19 Q. Is there any indication that any  
 20 director abstained?  
 21 A. No.  
 22 Q. Is there any indication that any  
 23 director changed his vote within days of the final  
 24 vote?

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1 merger at the August 2, 1999, board meeting that's  
 2 referenced in Defendants' Exhibit 1?  
 3 MR. BURKE: Objection. Foundation;  
 4 calls for speculation. You may answer.  
 5 A. Well, as I read this -- you're referring  
 6 to this, correct? To this document here?  
 7 Q. I'm referring to Defendants' Exhibit 1,  
 8 yes.  
 9 A. Unanimously approved?  
 10 Q. Well, it appears other places as well.  
 11 A. Is that what you're --  
 12 Q. I'm referring to the whole document, but  
 13 we can start with that sentence.  
 14 A. Reading that, I would have expected that  
 15 all the directors who were present and voting voted  
 16 for it.  
 17 Q. You qualified your answer a little bit  
 18 by saying --  
 19 A. All directors who were, you know --  
 20 yeah.  
 21 Q. All the directors were in the room?  
 22 A. All directors who voted for it. There  
 23 were no votes against. That's how I interpret  
 24 that.

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1 MR. BURKE: Objection. Misstates the  
 2 record. You may answer.  
 3 A. No.  
 4 Q. In the entire document, is there any  
 5 hint of dissent?  
 6 MR. BURKE: Objection. Calls for  
 7 speculation. That's overbroad.  
 8 A. Not that I recall.  
 9 Q. Let's turn now to the second part of  
 10 that same sentence. Your board of directors  
 11 unanimously believes that it is in the best  
 12 interest of OHSL stockholders.  
 13 MR. BURKE: Misstated the document.  
 14 Please read it accurately, Mr. Brautigam. At  
 15 least -- at least read it accurately.  
 16 MR. BRAUTIGAM: Jim, we don't need a  
 17 speaking objection. I did read it accurately  
 18 on the --  
 19 MR. BURKE: No, you did not,  
 20 Mr. Brautigam.  
 21 MR. BRAUTIGAM: -- second part of the  
 22 sentence.  
 23 MR. BURKE: Yeah.  
 24 MR. BRAUTIGAM: I read it fine.

21 (Pages 78 to 81)

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1 MR. BURKE: Are you reading the second  
2 sentence or the second part of the first  
3 sentence?

4 MR. BRAUTIGAM: Jim, I'm not going to  
5 debate with you, Jim. What I read is what I  
6 read.

7 MR. BURKE: Then fine. Read the  
8 question back.

9 THE WITNESS: Yeah, he didn't read it  
10 right.

11 MR. BURKE: You didn't read it  
12 accurately.

13 A. It doesn't say unanimously as it relates  
14 to that. It says and believes. Unanimously  
15 approves the acquisition and believes that it's in  
16 the best interest.

17 Q. Right. And do you believe that the word  
18 "unanimously" modifies and believes that is in the  
19 best interest of OHSL stockholders?

20 MR. BURKE: Objection.

21 A. What do you mean by modifies?

22 Q. Well, I believe, and I have expert  
23 testimony that the word "unanimously" refers to  
24 approved the acquisition and believes that it is in

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1 Q. Okay.

2 A. That's what it says.

3 Q. Does the sentence say to you that the  
4 entire OHSL board believes that the merger with  
5 Provident is in the best interest of OHSL  
6 stockholders?

7 A. Again, as I said before, unanimously  
8 says to me that everybody that voted was in favor  
9 and would have also said that all those same people  
10 thought it was in the best interest of the  
11 shareholders.

12 Q. Okay. So you do agree then that the  
13 word "unanimously" modifies both parts of the  
14 sentence, correct?

15 A. Okay.

16 MR. BURKE: Objection. Calls for  
17 speculation.

18 A. If that's what you mean, yeah.

19 Q. Well, you know who Ken Hanauer was,  
20 correct?

21 A. Yeah, the CEO.

22 Q. Of OHSL, correct?

23 A. Right.

24 Q. Did you ever learn from any source that

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1 the best interest of OHSL stockholders.

2 A. Yeah.

3 Q. So I did read it correctly when we're  
4 talking about the second part of the sentence. Do  
5 you agree with that reading?

6 MR. BURKE: No. That's not --

7 MR. BRAUTIGAM: Jim, we don't need  
8 speaking objections.

9 MR. BURKE: I'm going to speak an  
10 objection, Mr. Brautigam, and I don't care  
11 whether you like it or not. That's a  
12 mischaracterization of the document, and I  
13 have no idea what your question means.

14 A. I don't know what the question means.

15 MR. BURKE: You're throwing in there  
16 some expert testimony that nobody knows  
17 anything about.

18 So read the sentence, and we will have  
19 no objection. Whether he agrees with your  
20 expert or not is irrelevant.

21 A. This says to me that the board  
22 unanimously approved the acquisition, and that the  
23 board also believes that was in the best interest  
24 of the stockholders.

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1 Mr. Hanauer did not believe that the merger with  
2 Provident was in the best interest of OHSL  
3 shareholders?

4 A. I've learned it in relation to in the  
5 context of your suit. I don't have any real  
6 recollection of that before, no.

7 Q. Is that something that you would have  
8 wanted to know in 1999?

9 MR. BURKE: Objection. Calls for  
10 speculation; assumes facts not in evidence.  
11 You may answer.

12 A. To be honest with you, it wouldn't have  
13 been materially relevant to me. The question would  
14 be what did the board vote and what did the  
15 shareholders vote.

16 Q. If you had known that in 1999  
17 specifically that Mr. Hanauer did not believe that  
18 the merger with Provident was in the best interest  
19 of OHSL shareholders, would you have insisted that  
20 that information be disclosed?

21 MR. BURKE: Objection. Misstates the  
22 record; assumes facts not in evidence; that's  
23 not an accurate characterization. You may  
24 answer.

22 (Pages 82 to 85)

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1 A. I don't know how to answer that. I  
 2 really don't know how to answer the question. I  
 3 really don't.  
 4 Q. Why not?  
 5 A. Because, you know, the whole context of  
 6 it is -- I have no idea.  
 7 Q. Context of what?  
 8 A. Of your comment, you know, of your  
 9 statement that if I had known. I mean, I have no  
 10 idea what I would have thought. Had to have been  
 11 there, had the facts, and made a judgment at the  
 12 time.  
 13 Q. Okay. Mr. Hoverson, I grant you it's a  
 14 hypothetical question. Now, with that in mind,  
 15 it's appropriate for me to ask hypothetical  
 16 questions in some cases.  
 17 Now, given what you now know  
 18 specifically that Mr. Hanauer did not believe that  
 19 the merger was in the best interest of OHSL  
 20 shareholders --  
 21 A. I don't know that.  
 22 MR. BURKE: Right.  
 23 Q. You're not letting me finish my  
 24 question.

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1 A. Okay. I just want you to know that I  
 2 don't know that he -- I have no first-hand  
 3 knowledge of what Ken Hanover thought -- or,  
 4 Hanauer. I don't know.  
 5 (Plaintiffs' Exhibit No. 106 was marked  
 6 for identification.)  
 7 Q. Okay. Would you please pick up what has  
 8 been marked as Plaintiffs' Exhibit 106 and would  
 9 you read this Q. and A. on the first page to  
 10 yourself?  
 11 A. And who is this with?  
 12 Q. This is with Mr. Hanauer.  
 13 A. (Examining document.) Okay.  
 14 Q. Mr. Hoverson, back to this page and this  
 15 sentence, you agree that the sentence, Your board  
 16 of directors unanimously approved the acquisition  
 17 and believes that it is in the best interest of  
 18 OHSL stockholders, has two concepts, correct?  
 19 MR. BURKE: Objection. Vague; calls for  
 20 speculation. You may answer.  
 21 A. I mean, we discussed this already. I  
 22 mean, I agree that it says what it says. They  
 23 approved it and they recommended it.  
 24 Q. And approving and recommending are two

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1 different things, correct?  
 2 A. That's what you say.  
 3 Q. Actually, it talks about a belief. Do  
 4 you disagree with my interpretation that it  
 5 embraces two concepts?  
 6 MR. BURKE: Objection. Calls for legal  
 7 conclusion; calls for speculation. You may  
 8 answer.  
 9 A. No, I don't disagree.  
 10 Q. Okay.  
 11 A. I would agree -- disagree -- you know,  
 12 it says what it says.  
 13 Q. Now, your answer confused me a little  
 14 bit. Let me try again. Do you agree that the  
 15 sentence we're talking about contains two concepts?  
 16 MR. BURKE: Objection.  
 17 A. You know, it talks about approval; it  
 18 talks about recommendation. You know, yeah, I  
 19 guess those are two concepts.  
 20 Q. And the first concept refers to  
 21 something that actually happened; a vote, correct?  
 22 A. The approval.  
 23 Q. Correct. Yes?  
 24 A. Yes.

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1 Q. And the second concept refers to a  
 2 belief, correct?  
 3 A. Belief, recommendation, I guess. Right?  
 4 It's a belief. Okay? Yeah, okay, they say belief.  
 5 Q. From what you've read on the first page  
 6 of Plaintiffs' Exhibit 106, does it suggest to you  
 7 that Mr. Hanauer, the CEO, the largest shareholder,  
 8 and the only member of management on OHSL's board  
 9 did not believe that the merger was in the best  
 10 interest of OHSL shareholders?  
 11 MR. BURKE: Objection. Calls for  
 12 speculation based upon incomplete  
 13 hypothetical.  
 14 A. Yeah, all I know is what I see here on  
 15 your page. I don't know what happened in the board  
 16 meeting. He was there and could -- you know, I  
 17 don't know what he said. I assume he was  
 18 there. Was he there?  
 19 Q. Mr. Hoverson, do the question and  
 20 answers on page 1 of Plaintiffs' Exhibit 106 lead  
 21 you to conclude that Mr. Hanauer was not -- did not  
 22 believe that the OHSL-Provident merger was in the  
 23 best interest of OHSL shareholders?  
 24 MR. BURKE: Objection. Calls for

23 (Pages 86 to 89)

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1 speculation; vague; out of context; assumes  
 2 facts out of evidence. You may answer.  
 3 A. Yeah, all I can say is that this data  
 4 that you have furnished me says that that was his  
 5 opinion. That's what this says. That's all I -- I  
 6 don't know anything other than that.  
 7 Q. Is that opinion reflected anywhere in  
 8 Defendants' Exhibit 1?  
 9 MR. BURKE: Objection. No time  
 10 frame. Calls for speculation. You may  
 11 answer.  
 12 A. Not to my knowledge.  
 13 Q. As the CEO of Provident, do you believe  
 14 that if Mr. Hanauer did not believe that the merger  
 15 with Provident was in OHSL shareholders best  
 16 interest, that that information should be  
 17 disclosed?  
 18 MR. BURKE: Objection. Calls for  
 19 speculation; calls for legal conclusion. You  
 20 may answer.  
 21 A. Yeah, again, that's a legal question. I  
 22 don't have an answer to that. That's a question  
 23 for him and them, seems to me. If he -- you know,  
 24 felt that way, I don't know why he didn't -- why

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1 didn't he say something.  
 2 Q. Do you as CEO of Provident --  
 3 A. I don't know what he felt then. That's  
 4 what he says here.  
 5 Q. Mr. Hoverson, again, I'd just like to  
 6 remind you, I'm really trying not to step on your  
 7 answers if you would try not to step on my  
 8 questions.  
 9 MR. BURKE: I think he was completing  
 10 the prior answer, Mr. Brautigam.  
 11 A. Relax.  
 12 Q. Mr. Hoverson, I'm perfectly relaxed.  
 13 Can I hand you what has been previously been marked  
 14 as Plaintiffs' Exhibit 1. Would you take a look at  
 15 the sections that I've highlighted for you.  
 16 A. Which one?  
 17 Q. In the extreme right column.  
 18 MR. BURKE: There are two of them.  
 19 A. There are two highlights.  
 20 Q. Yes. Read both of them to yourself.  
 21 Mr. Hoverson, with this document or any other,  
 22 please feel free to take as much time as you need  
 23 to put it in context. Usually I think I can direct  
 24 your attention to where we need to be.

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1 A. (Examining document.) Okay. Question?  
 2 Q. There's a statement there attributed to  
 3 Mr. Burke, and it reads, Hanauer opposed the  
 4 Provident takeover because he wanted Oak Hills to  
 5 remain independent. Do you see that?  
 6 A. Um-hum.  
 7 Q. Did I read it correctly?  
 8 A. That's what it says.  
 9 Q. Is that a true statement?  
 10 MR. BURKE: Objection. Misstates the  
 11 facts; assumes facts not in evidence; relies  
 12 upon an inaccurate quote. You may answer.  
 13 A. I don't know.  
 14 Q. Is there anything in Defendants' Exhibit  
 15 1 that indicates that Mr. Hanauer opposed the  
 16 merger?  
 17 MR. BURKE: Objection.  
 18 A. I'm sure not.  
 19 Q. Why not?  
 20 A. I don't know. I don't know.  
 21 Q. Mr. Hoverson, are you a fair man?  
 22 MR. BURKE: Objection to form; objection  
 23 to relevance; vague. What does that mean? Go  
 24 ahead, Mr. Brautigam. What does that mean?

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1 Q. Do you have the question in mind,  
 2 Mr. Hoverson?  
 3 A. Do you have a question?  
 4 Q. Yes. Are you a fair man?  
 5 MR. BURKE: Objection to relevance.  
 6 A. What do you think?  
 7 Q. Mr. Hoverson, are you a fair man?  
 8 A. Of course.  
 9 Q. Do you believe that it's fair not to  
 10 have any hint of Mr. Hanauer's opposition in the  
 11 proxy materials, slash, registration statement?  
 12 MR. BURKE: Objection. Calls for  
 13 speculation.  
 14 A. I don't know when Hanauer felt --  
 15 MR. BURKE: Assumes facts not in  
 16 evidence.  
 17 A. -- what he felt, how he felt, when he  
 18 felt it, anything about it. Okay? And as to what  
 19 should be disclosed in there, I don't have -- you  
 20 know. I'm not going to speculate on what should  
 21 have been in there regarding him and what he  
 22 thought, because I don't know what he thought or  
 23 when he thought it.  
 24 Q. Did you ever ask him?

24 (Pages 90 to 93)

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1 A. No.  
 2 Q. Did you have any contact with  
 3 Mr. Hanauer in 1999?  
 4 A. Very little, but the sense of it was  
 5 that he seemed to be in favor of the transaction.  
 6 It wasn't -- he wasn't acting like he wasn't, from  
 7 what I knew.  
 8 Q. Please describe with as much specificity  
 9 as you can recall what contact you had with  
 10 Mr. Hanauer in 1999.  
 11 A. Frankly, I cannot recall any direct  
 12 contact that I had with him, but I'm quite sure  
 13 that's wrong. Okay? But I just -- I don't have  
 14 any specific memory of contact with him.  
 15 Q. I understand it's a long time ago. Do  
 16 you have any general recollection?  
 17 A. I really don't.  
 18 Q. Did you ever meet Mr. Hanauer?  
 19 A. Again, I know I did.  
 20 Q. What were the circumstances under which  
 21 you met him?  
 22 A. We met all the directors one night, and  
 23 he would have been there; and that's the only  
 24 specific kind of thing that I can recall that I --

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1 he would have, I'm sure, been there. I don't have  
 2 a specific memory though from being there.  
 3 Q. When you say "we," are you referring to  
 4 the Provident board?  
 5 A. No. That would have been myself and  
 6 Chris Carey.  
 7 Q. And please describe the circumstances  
 8 under which you met them. Did you go to them? Did  
 9 they come to you?  
 10 A. It was a discussion of the transaction.  
 11 Q. Where did --  
 12 A. We had approached them, as I recall.  
 13 Q. Where did it take place?  
 14 A. I don't remember. It could have been  
 15 the Queen City Club, but I'm not -- I'm not  
 16 positive of that.  
 17 Q. And you met all of the directors; is  
 18 that correct?  
 19 A. Could not tell you that with certainty.  
 20 Q. When did this meeting --  
 21 A. They're board, you know.  
 22 Q. When did this meeting take place?  
 23 A. Sometime in '99.  
 24 Q. Did it take place before or after the

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1 proxy materials were finalized?  
 2 A. Way before.  
 3 Q. Did you ever meet Tom Herron?  
 4 A. Name is not familiar. It doesn't mean I  
 5 didn't meet him.  
 6 Q. When you say way before --  
 7 A. Transaction was still not agreed to.  
 8 Q. Oh, okay.  
 9 A. Just discussion.  
 10 Q. Did you ever learn that a director had  
 11 resigned in part in protest --  
 12 MR. BURKE: Objection.  
 13 Q. -- from OHSL's board?  
 14 MR. BURKE: Misstates the record;  
 15 mischaracterizes the evidence.  
 16 A. Not that I recall. I mean, obviously,  
 17 I'm aware of the allegation that you made regarding  
 18 that, but not that I recall during the time period,  
 19 no.  
 20 Q. If you had been aware that a director of  
 21 OHSL had resigned in part in protest, would you  
 22 have insisted it be included in the proxy  
 23 materials?  
 24 MR. BURKE: Objection. Calls for

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1 speculation; assumes facts not in evidence;  
 2 incomplete hypothetical.  
 3 A. No. You know, what's -- what's included  
 4 in the proxy materials is a matter of law, and put  
 5 everything in there that the law requires, period.  
 6 You know, make sure it's in there.  
 7 Q. Mr. Hoverson, do you --  
 8 A. SEC attorneys make those kind of  
 9 decisions.  
 10 Q. Do you agree that you can delegate  
 11 authority but never responsibility?  
 12 MR. BURKE: Objection. Vague.  
 13 A. I don't know how to answer that. It's  
 14 certainly a common comment.  
 15 Q. Mr. Hoverson, we've already talked about  
 16 you voting your personal shares in favor of the  
 17 National City merger and your expectation that the  
 18 other Provident directors will vote their shares in  
 19 favor of the merger.  
 20 A. But I don't know that they did.  
 21 Q. Right. I don't understand that.  
 22 A. Good thing. Nobody really said.  
 23 Q. Okay. But based on the proxy materials,  
 24 a reasonable shareholder could only conclude that

25 (Pages 94 to 97)

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1 the directors would follow their own recommendation  
2 and vote their shares in favor of the Provident-  
3 National City merger, correct?

4 MR. BURKE: Objection. Calls for  
5 complete speculation as to what a reasonable  
6 shareholder would conclude. You may answer.

7 A. Yeah, I don't know how to answer  
8 that. I don't know what they would conclude.

9 Q. Mr. Hoverson, did you notice that your  
10 answer was almost an exact paraphrase of  
11 Mr. Burke's objection?

12 MR. BURKE: That's because your question  
13 would call for speculation.

14 A. I didn't.

15 Q. Mr. Hoverson, let's try this from a  
16 different angle. With respect to the National  
17 City-Provident merger, no reasonable person could  
18 conclude that the Provident directors would vote  
19 anything but in favor of the merger, correct?

20 MR. BURKE: Objection. Calls for  
21 speculation.

22 A. Yeah, I don't know how to answer that,  
23 frankly. I doubt that they gave much thought to  
24 how much stock the directors owned. I don't know

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1 voting in favor of the National City merger?

2 MR. BURKE: Objection. Vague;  
3 overbroad.

4 A. Yeah, I'm not sure what that means.

5 Q. Okay. How did you expect the OHSL  
6 directors to vote their personal shares with  
7 respect to the Provident-Oak Hills merger?

8 A. I would have expected them to vote for  
9 it.

10 Q. Why?

11 A. Because they voted for the transaction.

12 Q. Did you later learn that OHSL's CEO had  
13 not voted in favor of the merger?

14 A. I did.

15 Q. How did you learn that?

16 A. I don't remember.

17 Q. When did you learn that?

18 A. I don't remember that either.

19 Q. Was it before or after any litigation  
20 was filed?

21 A. I honestly do not remember.

22 Q. Did that trouble you in any way?

23 A. No.

24 Q. Why not?

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1 how to answer that.

2 Q. Well, you had an expectation that each  
3 of your --

4 A. I did.

5 Q. -- fellow directors would vote in favor  
6 of the merger, correct?

7 A. I did.

8 Q. And was that expectation based in part  
9 on the proxy materials?

10 A. No. It was based upon my firsthand  
11 knowledge and experience with them, and they're  
12 each -- seemed to be personal enthusiasm for  
13 them. So that was a judgment I made based on my,  
14 you know, one-to-one with them. I don't know if  
15 it's true, but that's...

16 Q. Right, and it's not based at all on the  
17 proxy materials?

18 MR. BURKE: Objection.

19 A. No, it's not.

20 MR. BURKE: Asked and answered.

21 A. It's not really in my case since I have  
22 a different relationship with them.

23 Q. Is there anything in the proxy materials  
24 that's inconsistent with the directors of Provident

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1 A. He's free to vote the way he wants.

2 Q. Now, Mr. Hoverson, you ran the special  
3 meeting with shareholders that took place on May  
4 20th, correct?

5 A. I did.

6 Q. And you got up before the assembled  
7 shareholders, and you gave a pitch essentially to  
8 vote in favor of the merger, correct?

9 MR. BURKE: Objection.

10 A. Actually, that's not what I did.

11 Q. Okay. Please describe what you did.

12 A. All I did was, you know, run the meeting  
13 on an official basis and indicate that, you know,  
14 we had a quorum of the votes present; asked for a  
15 motion; received a motion. We voted the shares  
16 that we had present and -- that were in favor of  
17 the transaction, and we concluded the meeting.

18 Q. Well, not so fast. Before you concluded  
19 the meeting, didn't you talk for a little while  
20 about what a great deal the Provident-National City  
21 merger was?

22 A. After the official meeting was  
23 concluded.

24 Q. After the official meeting was concluded

26 (Pages 98 to 101)

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1 or after the vote was taken?

2 A. After the official meeting was  
3 concluded.

4 Q. How long did the meeting last?

5 A. The official part of the meeting  
6 probably lasted five minutes.

7 Q. What did you say to close the meeting?

8 A. I believe I said the meeting's  
9 adjourned.

10 Q. And after you said the meeting was  
11 adjourned, did you remain at the podium and say  
12 something?

13 A. Yes. We then made some informal  
14 remarks.

15 Q. What was the nature of the informal  
16 remarks that you made?

17 A. I thanked our employees; thanked the  
18 Lindner family for their support over the years;  
19 thanked our directors for their support; said I was  
20 proud of the transaction; and wished everybody  
21 well.

22 Q. And were you aware that the OHSL  
23 shareholders went through a similar process on  
24 October 25th, 1999?

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1 interest of Provident shareholders?

2 MR. BURKE: Objection. Assumes facts  
3 not in evidence; calls for speculation.

4 A. Yeah, I don't know how to answer that  
5 question. I would answer it this way. If I  
6 thought that the deal was not in the best interest  
7 of the shareholders, I never would have voted for  
8 it in the board meeting. I would have voted  
9 against it in the board meeting.

10 Q. And you would have voted against it in  
11 the board meeting because that's your understanding  
12 of what your fiduciary duties requires, correct?

13 A. If I was against it -- I'm just telling  
14 you what I would have done. That's what I would  
15 have done.

16 Q. You're familiar with the term "fiduciary  
17 duty," right?

18 A. Yeah.

19 Q. What is your understanding of the phrase  
20 "fiduciary duty"?

21 MR. BURKE: Objection. Calls for legal  
22 conclusion. You may answer.

23 A. I mean, to do -- you know, to do the  
24 right thing, basically.

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1 MR. BURKE: Objection. Foundation;  
2 calls for speculation. You may answer.

3 A. Well, I know they would have had a  
4 special shareholder meeting. You have to have one.

5 Q. Did you know that Mr. Hanauer ran that  
6 meeting?

7 MR. BURKE: Objection. Calls for  
8 speculation. You may answer.

9 A. I don't know who ran it.

10 Q. Do you think it would have been fair for  
11 you to conduct the Provident-National City merger  
12 special meeting if you had voted your shares  
13 against the merger?

14 MR. BURKE: Objection. Calls for  
15 speculation. You may answer.

16 A. Yeah, it's my job.

17 Q. Do you think that it would be fair to  
18 run the meeting without telling anyone that you had  
19 voted your shares against the merger?

20 A. Yeah.

21 Q. Do you think that it would be fair for  
22 you to run the meeting calling for a vote in favor  
23 of the Provident-National City merger if you  
24 believed that the merger was not in the best

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1 Q. Even if --

2 A. For others.

3 Q. For the shareholders, correct?

4 A. Um-hum, yeah.

5 Q. Do you believe that Mr. Hanauer did the  
6 right thing as per your definition?

7 MR. BURKE: Objection.

8 A. Yeah, I can't --

9 MR. BURKE: Calls for legal conclusion;  
10 speculation.

11 A. I can't speculate as to what he  
12 did. I'm not inside his head.

13 Q. Mr. Hoverson, I'm not asking you to  
14 speculate as to what he did. You're the CEO of a  
15 public company. You have fiduciary duties --

16 A. And I will -- and I will speak to what I  
17 did and what I, you know, would have done if I was  
18 not in favor of the merger. I wouldn't have voted  
19 for it.

20 Q. Mr. Hoverson, respectfully, the way this  
21 process works is you are to answer my question.

22 A. Okay. Okay.

23 MR. BRAUTIGAM: Now, can I have my  
24 question read back?

27 (Pages 102 to 105)

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1 (The question was read back.)  
 2 MR. BURKE: Objection to form; vague.  
 3 A. I can't answer as to what Ken did. I  
 4 can't.  
 5 Q. Mr. Hoverson, as the acting chairman of  
 6 Provident's board, was it necessary for you to  
 7 assess whether your fellow directors were meeting  
 8 their fiduciary duties?  
 9 MR. BURKE: Objection.  
 10 A. In our transaction, you know, if the  
 11 board would have not been in favor, we wouldn't  
 12 have recommended for the transaction, right? If I  
 13 would have felt that I wasn't -- I'm the one who  
 14 recommended to the board we do the transaction. So  
 15 the context is kind of weird to even consider, you  
 16 know, any other kind of action.  
 17 Q. Do you know if Mr. Hanauer ever voted  
 18 against or abstained from continued negotiations  
 19 with Provident?  
 20 MR. BURKE: Objection. Foundation.  
 21 A. I don't know.  
 22 Q. You do not know?  
 23 A. Do not know.  
 24 Q. Do you know if Mr. Hanauer ever voted in

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1 favor of the merger?  
 2 A. I don't know that either.  
 3 Q. Okay. Please pick up the consolidated  
 4 amended complaint, and would you read paragraph 55  
 5 to yourself, please.  
 6 A. (Examining document.) Okay.  
 7 MR. BURKE: Just a second.  
 8 A. Okay.  
 9 Q. Mr. Hoverson, do you understand that the  
 10 question and answer in paragraph 55 is my asking  
 11 Mr. Hanauer a question?  
 12 MR. BURKE: Objection. Calls for  
 13 speculation; no foundation.  
 14 A. Yeah, I understand that.  
 15 Q. And is Mr. Hanauer's testimony, to wit,  
 16 that he voted in favor of the transaction because  
 17 he just gave up, consistent with your understanding  
 18 of a director of a public company meeting his  
 19 fiduciary duties?  
 20 MR. BURKE: Objection. Calls for  
 21 speculation; asks for a legal conclusion.  
 22 A. Yeah, I'm not gonna -- I'm not going to  
 23 speculate on what he did. He did what he did.  
 24 Q. Mr. Hoverson, respectfully, I don't

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1 believe that the question requires you to  
 2 speculate. Okay? It goes to your thought process.  
 3 We've already established that you're the acting  
 4 chairman of the board; you have fiduciary duties;  
 5 you know what they are; and you know if your  
 6 directors are exercising them, correct?  
 7 A. I wasn't there.  
 8 MR. BURKE: Respectfully --  
 9 A. I don't know what --  
 10 MR. BURKE: One second. We believe -- I  
 11 believe your question does call for  
 12 speculation, which is why I stated that  
 13 objection.  
 14 MR. BRAUTIGAM: Well, he can still  
 15 answer it.  
 16 A. I wasn't there. I don't know why he did  
 17 what he did.  
 18 Q. That's not my question. I'm not asking  
 19 you why he did what he did. I'm asking you to  
 20 accept Mr. Hanauer's sworn testimony, and the  
 21 question is does this meet your standard of how a  
 22 director should fulfill his fiduciary duties?  
 23 MR. BURKE: Objection. Calls for  
 24 speculation; calls for a legal

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1 conclusion. You may answer.  
 2 A. Yeah, again, I'm not going to speculate  
 3 on what he did or why he did it. You know, he did  
 4 what he did. Okay? I don't know why he did that.  
 5 Q. Did you know in 1999 that this is how  
 6 Mr. Hanauer felt?  
 7 MR. BURKE: Objection. Calls for  
 8 speculation. You may answer.  
 9 A. Not that I remember.  
 10 Q. Would this have been of interest to you?  
 11 MR. BURKE: Objection. Assumes facts  
 12 not in evidence. You may answer.  
 13 A. Yeah, frankly, I'm not sure how to  
 14 answer that. I don't know if it would have been or  
 15 not. In many cases with these small S&L's, the  
 16 CEO was a good job, and I can see where he would  
 17 have wanted to keep his job, and the directors  
 18 would have wanted to sell the company.  
 19 And he probably wouldn't have a job if  
 20 he sold the company, so his interest frankly could  
 21 diverge a bit from shareholders and the other  
 22 directors, but I'm speculating. I don't know if  
 23 that's true.  
 24 Q. My question is much simpler than that,

28 (Pages 106 to 109)

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1 Mr. Hoverson. Do you believe based on this  
2 question and answer that Mr. Hanauer fulfilled his  
3 fiduciary duties to the OHSL shareholders?

4 A. Yeah, I'm not --

5 MR. BURKE: Same objection. Asked and  
6 answered.

7 A. I'm not going to comment on whether or  
8 not he fulfilled his fiduciary duties. It's not  
9 something I have an opinion on.

10 Q. This is not a press conference, and no  
11 comment is not an appropriate response.

12 MR. BURKE: I don't have an answer is an  
13 appropriate response, Mr. Brautigam. That's  
14 exactly what he said.

15 A. I don't have an opinion on Ken Hanauer's  
16 actions.

17 Q. Mr. Hoverson, what are the purpose of  
18 proxy materials?

19 MR. BURKE: Objection. Calls for legal  
20 conclusion; asked and answered.

21 A. To provide information to the folks you  
22 send it to.

23 Q. Do you agree that the purpose of any  
24 proxy materials or prospectus is to provide

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1 language and that it not be misleading?

2 MR. BURKE: Objection. Calls for legal  
3 conclusion. You may answer.

4 A. Yeah, I mean, if that's what it says,  
5 that's what it says.

6 Q. Do you believe that Defendants' Exhibit  
7 1 presents information in clear, concise, and  
8 understandable language and that it not be  
9 misleading?

10 A. Yes.

11 Q. Do you agree that it's incumbent upon  
12 the board of directors and their advisors to impart  
13 all relevant information to shareholders regarding  
14 a proposed merger and to present it in such a way  
15 that it is readily comprehensible to shareholders?

16 MR. BURKE: Objection. Calls for legal  
17 conclusion. You may answer.

18 A. Again, that's the purpose of the proxy.

19 Q. Are you familiar with the Securities Act  
20 of 1933?

21 MR. BURKE: Same objection.

22 A. Yes, I know that there is one obviously.

23 Q. Do you have a working knowledge of its  
24 provisions?

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1 shareholders with all the information necessary for  
2 them to make a knowledgeable investment decision  
3 regarding their shares?

4 MR. BURKE: Objection. Calls for legal  
5 conclusion. You may answer.

6 A. Sure, and that's -- you know, and there  
7 are regulations that prescribe the information that  
8 needs to go in there.

9 Q. And as CEO and a board member of  
10 Provident, are you familiar with those regulations?

11 A. Not all of them, no, you know, but we  
12 have counsel and people that are.

13 Q. But you personally have a working  
14 knowledge of what should be disclosed and what  
15 should not be disclosed, correct?

16 MR. BURKE: Objection. Mischaracterizes  
17 prior testimony. You may answer.

18 A. I certainly have knowledge of things  
19 that -- you know, of the process. I guess that's  
20 the way I'd answer it, I guess.

21 Q. Do you agree with this statement: The  
22 Securities and Exchange Commission requires under  
23 Reg C that information in a prospectus be presented  
24 in, quote, clear, concise, and understandable

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1 A. I'm not an SEC attorney.

2 Q. I didn't ask if you were.

3 A. What's the question?

4 Q. Do you have a working knowledge of the  
5 provisions of the Securities Act of 1933?

6 MR. BURKE: Objection. Calls for legal  
7 conclusion.

8 A. I don't know, frankly.

9 Q. Okay. Are you familiar with the  
10 Securities Exchange Act of 1934?

11 MR. BURKE: Same objection. You may  
12 answer.

13 A. Yeah, you're getting too technical for  
14 me. My issue with the SEC is -- it's a full  
15 disclosure approach, and that's what it's about,  
16 and those rules are there to make sure that  
17 happens.

18 Q. Do you believe that the resignation of a  
19 director in part in protest would be something that  
20 should be disclosed under full disclosure?

21 A. You would have to ask counsel.

22 Q. You have no opinion on that?

23 MR. BURKE: Objection. Asked and  
24 answered.

29 (Pages 110 to 113)